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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 170.

THE UNITED STATES, APPELLANT,

VS.

MARGARITO BACA.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

FILED OCTOBER 2, 1900.

(17922.)

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3 UNITED STATES OF AMERICA,
Territory of New Mexico, ss:

Be it remembered that heretofore, to wit, on the 23d day of February, A. D. 1893, Margarito Baca et al., by their attorney, Bernard S. Rodey, filed in the office of the clerk of the Court of Private Land Claims, at Santa Fe, in the Territory of New Mexico, a petition, which petition is in the words and figures following, to wit:

1 In the Court of Private Land Claims of the United States of America, exercising jurisdiction in the hearing and decision of private land claims, according to the provisions of the act of Congress entitled, "An act to establish a Court of Private Land Claims, and to provide for the settlement of private land claims in certain States and Territories," approved March 3rd, A. D. 1891.

MARGARITO BACA (CLAIMANT FOR HIMSELF AND	} • No. 114.
other heirs), plaintiffs,	
<i>vs.</i>	
THE UNITED STATES OF AMERICA, DEFENDANT.	

Petition for the confirmation of the title to private land claim No. 104, known as the Baltazar Baca grant or the "San Jose del Encinal" tract in Bernalillo County, N. M.

To the Honorable JOSEPH R. REED, Chief Justice, and the Honorable WILBUR F. STONE, WILLIAM W. MURRAY, THOMAS C. FULLER, and HENRY C. SLUSS, Associate Justices of the said Court, sitting at Santa Fe, in the Territory of New Mexico:

Your petitioner, Margarito Baca, of lawful age, a citizen of the United States, and a resident of the county of Bernalillo, in the Territory of New Mexico, brings and files this his petition in writing for the confirmation to him, and to all other persons interested, of the title to a small tract or grant of land in said county, or in the county of Valencia, the same being within the limits of the territory derived by the United States from the Republic of Mexico, and now embraced within the Territory of New Mexico, and known and designated as the Baltazar Baca land grant or the "San Jose del Encinal" tract, which is file number one hundred and four, as reported from the surveyor-general's office of the Territory of New Mexico to Congress, and respectfully shows unto the court:

That said tract of land was granted to your petitioner's ancestors, Baltazar Baca and his two sons, in about the year A. D. 1768 or '69 by the then governor and captain-general of New Mexico, one Pedro Fernin de Mendinueta, New Mexico then being one of the ultramarine possessions of the Crown of Spain.

2 That your petitioner applies for the confirmation of the said tract unto himself and all other legal representatives of the said Baltazar Baca and his said two sons; and

That the nature of your petitioner's claim to said tract or grant of land is to have confirmed unto them the absolute title in fee simple in and to

the same by reason of their being the heirs and legal representatives of the said original grantees thereof; and that the title so claimed is hereinafter fully set out, and is such a title as the United States is bound to recognize and confirm by virtue of the treaty of cession of said Territory of New Mexico to the United States by Mexico, and otherwise; and because the said title is not, as your petitioner is informed, at the present time complete or perfect, and has not up to the date of the passage of the act of Congress aforesaid creating this court been confirmed by act of Congress or otherwise finally decided upon by lawful authority (although the same has, as before stated, been recommended for confirmation to Congress by said surveyor-general).

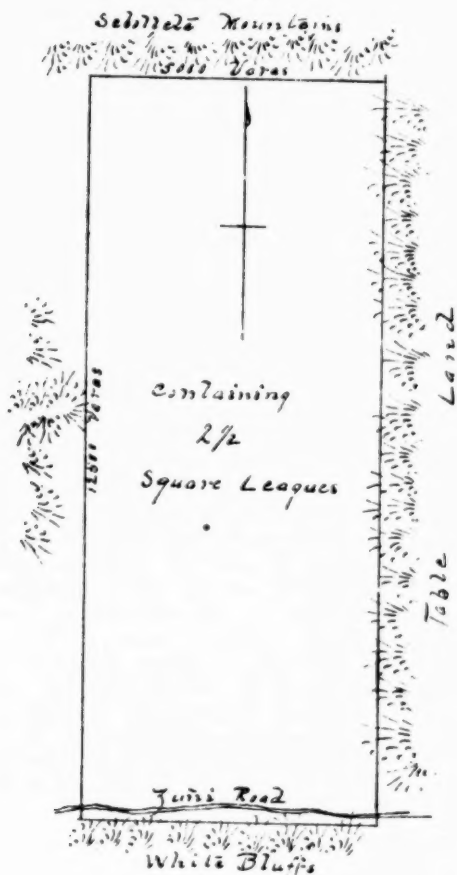
That your petitioner knows of no person who is in possession of or claiming the said tract or grant of land, or any part thereof adverse to him or the other heirs and legal representatives of the said Baltazar Baca and his said two sons, otherwise than by your petitioner's and the said other owners' lease and permission, save and except some few Indians of the pueblo of Laguna, whose names are to your petitioner at this time unknown, but who are represented by a governor whose name is also at this time to your petitioner unknown, but the names of all of whom, when ascertained, he prays leave to insert in this his petition, and prays process hereunder directed to the marshal as required by law to be served upon said governor of said pueblo, both for himself and all others

3 who may claim lands as members of his said pueblo or otherwise within the tract here petitioned for.

That the said tract contains, as your petitioner is informed and believes, something between fifteen and thirty thousand acres. That the same was petitioned for to the surveyor-general of the Territory of New Mexico by the heirs and legal representatives of the said Baltazar Baca and his two sons under the eighth article of the treaty of Guadalupe Hidalgo and the eighth section of the act of Congress of July 22nd, 1854, and was thereafter, in about the year 1874 or '75, recommended for confirmation by the said surveyor-general, and for such purpose transmitted to Congress as private land claim number one hundred and four as aforesaid; and that divers other proceedings were had with reference thereto.

That the situation and boundaries of said tract, together with all other particulars with reference thereto, will more fully appear by all of the original grant papers, concession, warrant, petitions, confirmation, approvals, liveries of possession seizen, reports, endorsements, surveys, sketches, maps, etc., etc., now remaining on file and of record in the archives of the Territory of New Mexico, in the office of the surveyor-general thereof, and which said originals are now, or will be at the proper time, transmitted to this court and filed herewith, and the same are now asked to be taken, read, and considered as a part of this petition; and copies and translations of all of which, or of as many as are now procurable, are here appended, and are as follows, that is to say:

Sketch Map
 Plaintiffs Exhibit 2 of
 Tract of Land granted to Baltazar Baca
 &
 Sons



No 170.
 Ustules } p 5
 Baca

- 4 Transcript of grant of land to Baltazar Baca and sons, being private land claim reported as No. 104 for land in Valencia County, New Mexico. Date of grant December 16th, 1768. Reported by the United States surveyor-general, December 24th, 1874.

PLAINTIFF'S EXHIBIT 1.—*Claimant's petition.*

Hon. JAMES K. PROUDFIT,
Surveyor-General of New Mexico:

Your petitioners, the heirs and legal representatives of Baltazar Baca and his two sons, all now deceased, respectfully represent:

That the said Baltazar Baca, for himself and his two married sons, in or about the year 1768, petitioned the governor and captain general of New Mexico, then one of the Spanish ultra marine possessions, for a certain tract of land known as the Encinal, situated in the present county of Valencia, in this Territory.

That in compliance with the prayer of said petition the said governor and captain general, on the 16th day of December of said year 1768, made to said Baca and his two said married sons a grant in fee for the said land, for the purpose of grazing their live stock thereon, under the boundaries asked, and directed the chief alcalde of the proper jurisdiction to place the petitioners in formal possession of the same.

That on the 19th day of January, 1769, said chief alcalde, in obedience to the command of said granting decree, proceeded to the tract of land so granted, and then and there placed said grantees in full legal possession and occupancy of said land, under the following metes and well-known boundaries, to wit: On the east, a table land; thence west five thousand Castillian varas to a sharp-pointed hill, the close of the league; on the north, Sebolleta Mountain; and on the south some white bluffs, adjoining an outside ranch belonging to an Acoma Indian, up to a hill at whose base runs the Zuni road.

That said grantees and their legal successors have ever since they were thus placed in possession been and remained in the legal possession of said land without disturbance, and they know of no adverse claim to said land or any part thereof.

That the original muniments of title for said land have always been in the possession of the Government, and are now on deposit in your office, among the old Spanish archives therein, the same being in file No. 114 of said archives, and your petitioners pray that the same be taken from said file No. 114 and placed with this their petition, and be made a part of this their claim for said land, together with the accompanying sworn translation of said muniments and sketch map of said tract of land.

Your petitioners pray that this their claim for said land be investigated and passed upon by your honor under the treaty of Guadalupe-Hidalgo and the law of July 22nd, 1854, establishing your office, and that the title to said land in fee simple be recognized and confirmed by the Congress of the United States to the heirs and legal representatives of the said Baltazar Baca and his said two married sons.

SAML. ELLISON,
Attorney for Petitioners.

Año de 1769. Merced de tierra hecha a Baltazar Baca.

SEÑOR GOBERNADOR Y CAPITAN GENERAL:

Baltazar Baca, oriundo de este reyno, vecino del puesto de Nuestra Señora de Belen, puesto a las plantas de Usia, pareco en toda forma de derecho y como mejor proceda a mi favor y digo, que, por cuanto en la parte dicha de donde vivo me hayo mui yncomodo para poder mantener una poca de hacienda que tengo de ganado mayores y menores, causa suficiente para pedir y suplicar se me de y conceda de merced un sitio de tierra en donde poder mantener dicha hacienda yo, y familia que es algo cresida, para cuyo fin tengo visto y registrado un pedazo de tierra suficiente para dicho efecto, con aguas, montes y pastos, el cual sito adelante del pueblo de la laguna mas de tres leguas, poco mas o menos, y de donde llaman el Encinal, como legua y media, mas o menos, con cuya tierra no perjudico al dicho encinal, ni los ranchos de los Indios Acomas y Lagunas, pues siempre quedan a salvo sin ser danificados ni yo hacer ningun dano; la cual tierra es iriasa yerma y despoblada, legitimamente realenga, segun tengo reconocido, cuyos linderos seran por el oriente adonde llegare la llegua del encinal, por el poniente con una mesa que se acerca al camino de Zuni, par el norte la sierra, por el sur unas penas blancas; que comprendera todo poco mas de media legua de ancho y como dos y media de largo esto es lo que pido yo y dos hijos mios emancipados, y la causa motiva que tengo a mas de la que llevo dicho es el no tener ni un palmo de tierra mercenado, ni mi padre ni antepasados lo han tenido, porque las partes en donde hemos vivido han sido adquiridas en venta real, y todos descendemos de conquistadores de este reyno, a mas de estar nuestras personas espuestas hacer el real servicio cuando se nos manda y ha mandado; todos estos motivos me hacen hacer a Usia esta suplica a quien muy rendido pido y suplico me atienda y conceda por todo lo cual.

A usia pido y suplico con las beras de mi mayor rendimiento sea muy servido de concederme esta merced, en lo que recibire bien y merced y juro no ser de malicia y en lo necesario, &c.

BALTAZAR BACA.

En esta villa de Santa Fe, en diez y seis dias, del mes de diciembre de mil setecientos sesenta y ocho años, se presento la antecedente peticion, por el contenido en ella, y atento a las razones que espone y al mayor fomento de ganados de toda especie tan necesarios para la subsistencia de este reyno, y a que la mente de su magestad (dios le guarde), es que sus vasallos gocen de las comodidades que sean posibles y aumenten sus bienes, por todo lo cual, yo, Don Pedro Fermín de Mendin ueta, del orden de Santiago, coronel de los reales ejercitos, gobernador y capitán-general de este reyno del Nuevo Mejico, dije que concedia y de facto concedo de merced y en nombre de su magestad (que dios guarde), a Baltazar Baca y sus dos hijos emancipados el sitio de tierras realengas que pide, bajo los mismos linderos que senala, si sus distancias no exeden cosa considerable de las propuestas en la peticion, sin perjuicio de tercero que mejor derecho tenga, y esta merced se la hago con igualdad padre e hijos, para ellos y sucesores, para pastoria de sus ganados y en ningun modo

para siembras, y bajo las condiciones siguientes: que no desamparen el domicilio que a lo presente tienen, que no puedan vender a persona eclesiástica, que no perjudiquen a los Ranchos y labores que en aquellas inmediaciones tienen los Indios de los pueblos de Acoma y Laguna, y mucho menos a los Apaches infieles de la provincia de Navajo, antes si les conviene que con el fiel y cristiano trato, afabilidad y caricia procuren atraerlos al gremio de nuestra santa fe y vasallaje a nuestro soberano; y para que los referidos Baltazar Baca y sus dos hijos emancipados tomen posesion del sitio mercenado doy comision bastante y quanto por derecho se requiere y es necesaria al alcalde mayor de los pueblo Acoma, Laguna y Zuni, Antonio Sedillo, para que pase alsitado paraje mercenado y desde el lugar en donde se empezó a fundar la mision del Encinal, mida una legua de cinco mil varas castellanas al rumbo del poniente, y en su remate pondra mojonera estable y firme, la que servira de lindero a los mercenados, y precediendo citacion de colindantes si los hubiere, y no habiendo legitima contradiccion de parte los pondra en posesion segun costumbre, y dada que sea suera testimonio de todo y se lo entregara a los mercenados que les sirva de bastante título y devolvera los originales, para colocarlos en el archivo de gobierno.

Y así lo provee mande y firme yo el supra dicho gobernador y capitán-general, con los testigos de mi asistencia, a falta de escribanos que no los hay en esta gobernacion de ninguna clase.

PEDRO FERMIN DE MENDINUETA.

MATEO DE PENARREDONDA.

ANTONIO MORETO.

8 En este pueblo de Señor San Jose de la Laguna, en diez y nueve dias del mes de enero de mil setecientos sesenta y nueve años, yo Antonio Sedillo, alcalde mayor y capitán a guerra de dicho pueblo y sus distritos en cumplimiento del auto arriba proveido por el Sr Don Pedro Fermín de Mendinueta, caballero del orden de Santiago, coronel de los reales ejércitos, gobernador, y capitán-general, castellano de sus reales fuerzas y precedido por su magestad, que Dios guarde, pase al paraje mencionado que en dicho auto se me manda, acompañado de los Indios principales de dicho pueblo y los demas colindantes del pueblo de Acoma, y Apaches Navajoes, a los que les di a entender al fin que iba, que era a meter en posesion el Capitán Baltazar Baca y sus dos hijos, que dijeran si tenían a bien el que los referidos viviesen allí o si se les perjudicaba en algo, que avisasen en mi presencia; a lo que respondieron por varias veces que no, que antes lo tenían a mucho gusto, por que ya lo conocian que era buen hombre y les ayudaria a lo que se les ofreciese en el real auxilio, y así que lo daban por bien, adonde los coji de la mano y en nombre de su magestad les di la real posesion, poniendole por nombre al referido sitio Sr. San Jose del Encinal, haciendo las ceremonias acostumbradas que se requieren, tomándolos de la mano y paseándolos: arancaron sacate, tiraron piedras y todos a una voz dijeron, Viva el rey, les senale sus linderos en la forma que su senoria lo manda, que son por el oriente, una mesa que al pie de ella me pare, hice medir un cordel de cien varas de a cuatro cuartos, donde medi cinco mil varas castellanas, linea recta para el poniente, que alcanzo la legua adonde esta un serro negro, que hace piendo, que hace como bufá, y por el norte, no medi por reconocer estar en la forma

que el espresado y sus hijos piden, dandoles por lindero la sierra de la Sebolleta por dicho viento, por el sur unas penas blancas que estan inmediates a un rancho de un Indio de Acoma, fronterizo a una mesa que al pie de ella va el camino de Zuni; y para que conste lo firme con los testigos de asistencia, en dicho dia, mes y año a falta de escribano publico ni real, que no lo hay en este reyno; dé que doy fe.

ANTONIO SEDILLO,
Juez Receptor.

Testigo:

CARLOS JOSE PEREZ DE MIRABAL.

Testigo:

ANTONIO FELIZ SEDIA.

Translation of muniments.

Year 1769.

To his Excellency the GOVERNOR & CAPTAIN-GENERAL.

I, Baltazar Baca, a native of this province and resident of the place of our Lady of Belen, placing myself at your excellency's feet, appear before you in due form of law and state that: Whereas at said place of my residence I find myself very badly provided for the maintenance of the small means which I have, consisting of herds of live stock, which is a sufficient reason for asking and praying that a tract of land be given and conceded to me by grant to enable me and my family, rather a large one, to keep our said herds thereon, for which purpose I have examined and registered a piece of land sufficient for that object, containing water, wood, and pasturage, and which is situated in front of the pueblo of Laguna, more than three leagues therefrom, a little more or less, and from the place called the Encinal about a league and a half, more or less, with which land I do not injure the said Encinal nor the ranches of the Acoma and Laguna Indians, for they will always remain secure, they nor I sustaining damage, which land is vacant, uncultivated, and unsettled, and entirely unappropriated as I have ascertained; and the boundaries thereof are, on the east to where the league of the Encinal may extent, on the west a table-land that approaches the Zuni road, on the north the mountain, and on the south some white bluffs, the whole comprising somewhat more than a league and a half in width and about two and a half in length.

This is what I ask, I and two married sons of mine, and the principal reason I have besides that I have mentioned, is that I have not a span of granted land, nor have my father or ancestors had any, for the

10 places where we have resided have been acquired through royal sale.

We all descend from the conquerors of this province, and, furthermore, our persons are devoted to the royal service whenever we are called upon, as we have been commanded.

All these reasons prompt me to make this petition to your excellency, to whom I very humbly pray that you may hear me and grant my supplication.

In consideration of all which, I ask and pray your excellency, in the earnestness of the utmost submission, that you be pleased to make me

this grant, whereby I will receive benefit and favor, and I declare that this is not done through dissimulation, and whatever be necessary, &c.

BALTAZAR BACA.

11 At this village of Santa Fe, on the sixteenth day of the month of December, in the year one thousand seven hundred and sixty-eight, the foregoing petition was presented by the applicant, and in view of the reasons he sets forth therein, and for the greater increase of live stock of all kinds, so necessary for the subsistence of this province, and bearing in mind that the will of His Majesty (God preserve him) is that his subjects enjoy all the conveniences possible and increase their possessions—in consideration of all this, I, Pedro Fermín de Mendinueta, of the order of Santiago, colonel of the royal armies, governor and captain-general of this province of New Mexico, declare that I would and do, de facto, concede by grant and in the name of His Majesty (whom may God preserve) unto Baltazar Baca and his two married sons the tract of public domain which he applies for, with the same boundaries designated by him, if their length does not exceed to any considerable extent those stated in the petition, and without prejudice to any third party having a better right; and this grant I do make to father and sons in equal shares, for them and their successors, for the pasturage of their herds of stock, and not in any case for planting, and under the following conditions: That they do not abandon the residence they do now occupy; that they shall not sell the same to any ecclesiastical person; that they shall not injure the ranches and fields of the Indians of the pueblos of Acoma and Laguna have in that vicinity, and much less the unchristianized Apaches of the Navajo province; and they are notified that they shall rather endeavor to attract them by faithful and Christian treatment, of fidelity and kindness, to embrace our holy faith and to the vassalage of our sovereign.

And in order that the said Baltazar Baca and his said two married sons may take possession of the tract granted, I confer full authority to the extent the law requires and is necessary upon Antonio Sedillo, chief alcalde of the pueblos of Acoma, Laguna, and Zuni, that he proceed to the said granted tract, and that he begin at the place where the founding of the mission of Encinal was commenced, measure off one league of five thousand castilian varas towards the west, and at the close thereof place a lasting and firm landmark to serve as a boundary to the grantees, and having notified the parties adjoining, if any there be, and there being no legal objection made by any party, he will place them in possession in the customary form, and the possession having been executed, he will make a testimonio of the whole proceedings and deliver the same to the grantees to be to them ample title, and he will transmit the originals to be deposited among the government archives.

And thus I, the above-named governor and captain-general, provided, commanded, and signed, with my attending witnesses, for want of a notary, there being none of any class in this jurisdiction.

PEDRO FERMIN DE MENDINUETA.

MATEO DE PENAREDONDA.
ANTONIO MORETO.

12 At this pueblo of San Jose de la Laguna, on the nineteenth day of the month of January, in the year one thousand seven hundred and sixty-nine, I, Antonio Sedillo, chief alcalde and war captain of said pueblo and its districts, in compliance with the above decree, made by Pedro Fermin de Mendinueta, knight of the order of Santiago, colonel of the royal armies, governor and captain-general, castellan of the royal forces and garrison of His Majesty (whom may God preserve) proceeded to the place referred to, as directed in the said decree, accompanied by the principal Indians of said pueblo, by the other neighboring settlers of the pueblo of Acoma, and by the Navajo Apaches, and I gave them to understand the object in going there, which was the placing in possession Captain Baltazar Baca and his two sons, and that they should state whether they desired the said Baca and sons to reside there, or if it would injure them in any way, and to inform in my presence; to which they answered repeatedly that it would not, and that they were pleased thereat, inasmuch that they knew he was a good man and would assist them in whatever might offer for the royal service, and they therefore deemed it well; whereupon I took the parties by the hand and in the name of His Majesty placed them in royal possession, naming said tract of land San Jose del Encinal; observing the customary ceremonies, and conducting them over the land, they plucked up grass, cast stones, and all shouted with one voice, "Long live the King." I designated to them boundaries in the form His Excellency commands, and they are: On the east, a tableland, and at the foot thereof I halted and caused to be measured a cordel of one hundred varas of four spans each, whence I measured off five thousand castellan varas in a due west course, which is the extent of the league, and at which close there stands a sharp-pointed black hill; and I did not measure on the north, as I observed that the form of the tract was as asked for by said Baca and his sons, designating to them as boundaries on that side the Sebolleta Mountain; on the south, some white bluffs adjoining an outside ranch belonging to an Acoma Indian, up to a hill at whose base runs the Zuni road. And that it may so appear, I sign this, with two attending witnesses, on said day, month, and year, for want of a public or royal notary, there being none in this province; to which I certify.

ANTONIO SEDILLO,
Special Justice.

Witness:

CARLOS JOSE PEREZ DE MIRABAL.

Witness:

ANTONIO FELIS SEDIA.

13 The foregoing translation made by me is to the best of my knowledge and belief a true translation of the original.

SAML. ELLISON.

Subscribed and sworn to before me this December 10, 1874.

JAMES K. PRODFIT,
Surgeon-General.

SURVEYOR-GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
Santa Fe, New Mexico, December 10, 1874.

The foregoing translation, having been by me compared with the original in Spanish and found correct, is hereby adopted for the official translation.

DAV. J. MILLER, *Translator.*

PLAINTIFF'S EXHIBIT, No. 4.—*Surveyor-general's decision.*

OPINION.

This claim for land is brought before me under the eight' article of the treaty of Guadalupe Hidalgo, and the eight' section of the act of Congress of July 22, 1854, establishing this office.

The original title papers are a part of the official archives of this office, and are in the Spanish language, and no doubt genuine. It appears from them that the land was granted to Baltazar Baca and his two married sons on the 16th day of December, 1768, by Pedro Fernin de Mendinueta, at that time governor and captain-general of New Mexico, a province of Spain, and that by his order Antonio Sedillo, special justice, placed the grantees in legal possession on the 19th day of January, 1769.

Believing this grant to be genuine and legal, I respectfully recommend that it be confirmed by Congress to the legal representatives of the original grantees, according to the description and boundaries set forth in the act of possession.

I transmit complete copies of the record in triplicate.

JAMES K. PROUDFIT,
United States Surveyor-General.

UNITED STATES SURVEYOR-GENERAL'S OFFICE,
Santa Fe, New Mexico, December 24, 1874.

Authentication of transcript.

SURVEYOR-GENERAL'S OFFICE,
Santa Fe, New Mexico, December 26, 1874.

The foregoing is a correct transcript of the papers on file in this office in private land claim reported as number 104, in the name of Baltazar Baca and sons.

JAMES K. PROUDFIT,
United States Surveyor-General.

14 And your petitioner having thus fully set forth the original source of title to said tract, and stated that he is a descendant of the original grantees as aforesaid, now further respectfully represents:

That he himself has resided upon said tract of land for about forty-five years last past, and is now still residing thereon and in possession thereof with other of his relatives, who are like descendants of the said original grantees; and that although he has stated in this his said petition that certain Indians of the pueblo of Laguna are in possession of portions thereof, he is not, as matter of fact, certain that the lands in possession of said Indians come within the boundaries of said tract, and has

stated the fact only out of an abundance of caution and to the end that no unfair advantage shall be taken of the said Indians, and to show his, your petitioner's, good faith to this court; and he further represents that all conditions and requirements, either antecedent or subsequent, with reference to perfecting the right to said title and the right to have the same now here confirmed were and have been fully performed and complied with, within the time and in the manner stated in all of said original grants or concessions, etc.

And your petitioner further represents that there is in the said surveyor-general's office, in addition to the papers herewith now submitted, proper sketch maps, which will be, at the proper time, presented to this court, and copies of which he asks leave at the proper time to file with this his petition, as well as the originals, wherefore your petitioner respectfully prays that the court will take and exercise jurisdiction of this his petition and hear and determine all questions relative to his and his co-owners' said tract of land, its extent, proper location, and boundaries, and whether or not the same when correctly located will in

15 any manner conflict with any neighboring property to which there is superior title; and that the court will take cognizance of all other matters connected herewith fit and proper to be heard and determined, and will by final decree settle and determine the question of the proper location of the said grant or tract of land, and of the validity of this title, and of the boundaries thereof according to the law of nations, the stipulations of the treaty concluded between the United States and the Republic of Mexico at the city of Guadalupe-Hidalgo on the 2nd day of February, A. D. 1848, or the treaty concluded between the same powers at the city of Mexico on the 13th day of December, A. D. 1853, or both, as may be proper and according to the laws and ordinances of the Kingdom of Spain, from which the said title is alleged to have been derived as aforesaid, and all other laws proper to be considered in the premises that govern the rights of the petitioner and his co-owners, as the said laws and ordinances are applicable to the ultramarine province of New Mexico under said Crown as aforesaid; and that all other questions properly arising between this claimant and his co-owners and the United States of America, or other parties in the case, shall, in like manner, be finally determined and forever set at rest; and that your petitioner's and his co-owners' title, as aforesaid, be confirmed unto him and them absolutely and in fee simple in accordance with his rights and all of said laws and equity and good conscience, and that he and his said co-owners have such other further, specific, and general relief in the premises as the facts and the law may suggest, equity require, or to the conscience of the court shall seem just and right, and he, your petitioner, for himself and his co-owners, will ever pray.

16 Your petitioner further prays such process as may be necessary under the law and the terms of this petition.

MARGARITO BACA,

*Person, for himself, heirs, and legal representatives
of Baltazar Baca and his two sons,*

BERNARD S. RODEY,

Solicitor for Petitioner.

17 And be it further remembered, that on the 23d day of March, A. D. 1893, a summons was issued by the clerk of said court, which summons, with all endorsements thereon, is in the following words and figures, to wit:

18 Form No. 167. U. S. Court of Private Land Claims.

Summons.

In the U. S. Court of Private Land Claims.

UNITED STATES OF AMERICA,
District of New Mexico, ss:

MARGARITO BACA ET AL., PLAINTIFF,	} Petition filed in the clerk's office this 23d day of February, A. D. 1893.
<i>versus</i>	
THE UNITED STATES OF AMERICA,	}
defendant.	

The President of the United States of America to Matt. G. Reynolds, esq., greeting:

You, and each of you, are hereby notified that an action has been brought in said court by Margarito Baca et al., plaintiff, against you as defendant, under the provisions of the act of the Congress of the United States entitled "An act to establish a Court of Private Land Claims, and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court within thirty days from the date of service of this summons upon you; and if you fail so to do, the said plaintiff will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the Court of Private Land Claims, and the seal of the said court, at the city of Santa Fe, in said district, this 23d day of March, A. D. 1893, and of the Independence of the United States the 117 year.

[SEAL.]

JAMES H. REEDER, *Clerk,*
By IRENEO L. CHAVES, *Deputy Clerk.*

19

Proof of service.

UNITED STATES OF AMERICA,
District of New Mexico, ss:

SANTA FE, April 21, A. D. 1893.

I hereby certify that I received the within writ on the 23 day of March, A. D. 1893, and that I have personally served the same upon the said defendant by delivering to—

Served on me this the 29 day of Mch., 1893.

MATT. G. REYNOLDS,
U. S. Attorney.

This writ, therefore, returned by me as the law directs, this 21 day of April, A. D. 1893.

TRINIDAD ROMERO,
Marshal,
By SERAPIO ROMERO,
Deputy Marshal,

MARSHAL'S FEES.

Service	defendants, at	
82.....		8
Mileage,	miles, at 6c.,	
going only.....		
1 summons.....		4.00

Total.....	\$4.00	Paid by
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(Indorsed:) Gen. No., 114. F. No., 3. U. S. Court of Private Land Claims, district of New Mexico. Margarito Baca et al., plaintiff, versus The United States, defendant. Summons. Filed in the office of the clerk Court of Private Land Claims, April 21, 1893. Jas. H. Reeder, clerk, by I. L. Chaves, deputy.

20 And be it further remembered that thereafter, to wit, on the 25th day of August, A. D. 1896, there was filed in the office of the clerk an answer, which answer is in words and figures following, to wit:

21 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Santa Fe district. August term, 1896.

MARGARITO BACA ET AL.	}	San Jose del Encinal tract No. 114.
<i>vs.</i>		
UNITED STATES.	}	

Answer.

Now comes the United States, by its attorney, Matt. G. Reynolds, and for answer filed in the above-entitled cause says:

That it is true, as it is alleged in said petition, a concession was made to petitioner's ancestors in or about the year 1768 by the then governor and captain-general of New Mexico of the tract of land described in claimant's petition.

Defendant denies, however, that said concession was a grant, or that it conveyed any title in fee, but avers on the contrary that the same was a mere permission to pasture, and passed no right or title to the lands, and conveyed no title such as the United States is bound to recognize and confirm by virtue of the treaty of cession of said territory of New Mexico to the United States or otherwise.

Defendant admits, as alleged in said answer, that the Indians of the pueblo of Laguna are in possession of portions of said lands, and avers

that said Indians are in possession of the greater part of the same under patent to them by the United States covering what is known as the Pojoaque purchase made by said Indians.

Defendant further answering shows that a large portion of land described in said petition is owned, claimed, and possessed by the owners of the Cevolleta grant, reported number 46 heretofore confirmed by Congress, and that all of the land contained within said described tract under said alleged grant is included in the two patents aforesaid, one to the said Indians of Laguna and the other to the owners of the tract of Cevolleta.

Further answering, defendant says that it is not true that said petitioner, Margarito Baca, has resided upon said tract for forty-five years last passed, but, as defendant is informed and believes, said Baca has not resided thereon for a time greater than thirty years, and that said Baca does not reside thereon by virtue of a grant to him or to his ancestors, but by virtue of a purchase made by his father, Marcus Baca, from certain Navajo Indians of twenty or thirty acres at or near the town of Encinal.

That the possession of said Baca is not extended beyond said limit of twenty or thirty acres purchased as aforesaid, the rest of said lands included within said tract being claimed, held, and occupied by the Indians of Laguna and the owners of the tract of Cevolleta as aforesaid.

Defendant further answering denies that said complainant or his ancestors complied with the conditions of said grant, but on the contrary violated and have violated the same in that they have used the same for planting, when said grant specifically requires that it shall not be so used, and have used said tract as a residence, when the conditions of said grant require that it should not be so used.

Defendant further answering says that any rights which said grantees or their descendants might have had in said tract even if said concession had been a grant have been forfeited and lost by reason of abandonment.

As to all other matters alleged in claimant's petition defendant alleges that it has no knowledge or information sufficient to enable it to form a belief as to whether they are true, and not confessing any of them to be true in the manner and form as the same are in said petition set forth and alleged, it asks that plaintiffs be put to their proof of all allegations therein contained as provided they shall be by the act of Congress approved March 3rd, 1891, under which this court assumes jurisdiction of this controversy, and that they shall be put to their proof as to their pretended interest in said alleged grant.

Now, having fully answered, it prays the court that a decree may be entered rejecting the claim for said grant and dismissing the petition, and for such other orders as to the court may seem meet and proper and which it may be authorized to make in the premises.

Respectfully submitted.

MATT. G. REYNOLDS,
U. S. Attorney.

term of said court, 1896, held at Santa Fe, in the Territory of New Mexico, the following proceedings were had:

MARGARITO BACA ET AL.	}	No. 114. San Jose del Encinal grant.
<i>vs.</i>		
UNITED STATES.	}	

The above-entitled cause now coming on to be heard, there appeared W. H. Pope, esq., assistant U. S. attorney, for the said defendant, the United States, and Bernard S. Rodey, esq., appeared for and on behalf of the plaintiffs, and the parties announcing themselves ready, the trial of the cause was proceeded with on the pleadings present. Oral and documentary proof was introduced, and the same not being completed the further hearing of the cause was postponed until the following days, when on said days, to wit, the 26th and 27th of August, A. D. 1896, the court resumed its consideration of the cause, and the evidence in the cause being concluded, and after hearing the argument of the counsel, the cause was submitted to the court for decision, and was by the court taken under advisement.

25 The evidence, both oral and documentary, offered and introduced on the trial is as follows, to wit:

26 In the Court of Private Land Claims, Santa Fe, New Mexico, August term, 1896.

MARGARITO BACA ET AL.	}	114. San Jose del Encinal tract.
<i>versus</i>		
UNITED STATES.	}	

On August 24th, 1896, the above-entitled cause was called up for trial and the following proceedings were had therein in open court:

Appearances, Bernard S. Rodey, esq., for the plaintiffs; Wm. H. Pope, esq., asst. U. S. attorney, for the Government.

MR. RODEY. I will read the petition to the court.

MR. RODEY. It is admitted that the exhibits about to be offered are from the proper custody in the surveyor-general's office of the Territory of New Mexico with reference to this claim and that they are the papers filed in number 104.

MR. POPE. Yes; we admit it.

MR. RODEY. No. 1 is the petition for the confirmation of the grant before the surveyor-general, file number 178. (See petition, page 4.)

No. 2 is a sketch map. (See petition, page 5.)

No. 3 is the copy and translation of all the original papers. (See petition, pages 6 to 12.)

No. 4 is the opinion of the surveyor-general. (See petition, page 13.)

No. 5 is the testimony of Ramon Sanchez taken before the surveyor-general with reference to the boundary calls.

MR. POPE. We object to that until there is a foundation laid for it.

We also offer in evidence Nos. 6 and 7, testimony of Jose J. Sevedra and Margarito Baca.

MR. POPE. We object to these, as they are simply affidavits taken by the deputy surveyor when he was out making the survey; the Govern-

ment was not a party to it and had no opportunity to cross-examine these witnesses.

27 We also offer in evidence the map of the surveyor-general.
(Pliffs' Ex. 8.)

MARGARITO BACA, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified upon direct examination by Mr. Rodey as follows:

Q. State your name to the court.

A. Margarito Baca.

Q. Are you the petitioner who signed the petition for the confirmation of this grant under investigation?

A. Yes.

Q. Where do you live?

A. At San Jose de Encinal, county of Valencia, New Mexico.

Q. How many years have you lived there?

A. Since the year '46; my father moved there, and from that time I lived there about 36 years.

Mr. POPE. Object to what his father did.

Q. How old are you?

A. I am going on 56 years of age.

Q. Do you know a land grant known as the San Jose de Encinal tract, or the grant of Baltazar Baca and his two sons?

A. Yes.

Q. Where is it located?

A. Between the Cebolleta, town grant of Acoma and Cubero, Valencia County, New Mexico.

Q. State whether or not the original grantees of this grant, Baltazar Baca and his two sons, bear any relationship to you.

A. So I have been told.

Q. What relationship, if any, exists between you and these people?

A. Perhaps he was the great-grandfather of my father.

Q. Do you know what your father's name was?

A. Marcos Baca.

Q. What was your grandfather's name—your father's father?

A. Jose Baca.

Q. Now, what relation, if any, was Jose Baca, your grandfather, to Baltazar Baca, the original grantee of this grant, if you know?

Mr. POPE. Object, as leading.

A. I am informed that he was the son of Baltazar Baca.

Q. Then what relation exists between you and Baltazar Baca?

A. I do not know in what degree I am his relative; he is very many years before me.

Q. Reckoning from the relationship you have just stated to the court, what would he be to you?

A. He was the great-grandfather of my father; I do not know the degree.

28 Q. State whether or not you know the boundaries of this tract of land known as the San Jose del Encinal tract?

A. I know them on three directions.

Q. Tell them to the court.

A. On the south a trail coming towards Jemez at the place where the Mesa Blanca is situated; on the east the Black Mesa that has a sort of a peak formation; it is a mountain that is called the Black Mesa.

Q. Which side of the grant is the peak on?

Mr. POPE. Object to asking where that peak is.

The COURT. There is no controversy about the boundaries, is there?

Q. State the other boundaries.

A. I do not know the northern boundary line. On the north side it is stated that the north boundary line is the Cebolleta Mountains.

Q. State whether or not you live within these boundaries just given by you.

A. Yes.

Q. How many years have you lived there?

A. I have said about thirty years.

Q. State where your father lived during his lifetime.

A. At the same place where I lived—at San Jose del Encinal.

Q. State how many years he lived there.

A. He lived there about 60 years.

Q. State whether or not he was living upon the land previously to '46.

Mr. POPE. Object as suggestive of the answer.

The COURT. He may answer the question.

A. Yes.

Q. Are you now still residing on that tract of land?

A. Yes.

Q. Are there others of your children, members of your family, or relatives living there?

Mr. POPE. Object as leading.

The COURT. O, he can answer this.

A. I have lived there with some of my sons and with a niece of mine.

The COURT. Take a recess now until two o'clock.

The hour of two o'clock p. m., of August 24th, 1896, having arrived, the further hearing of the above-entitled cause was resumed, and the following proceedings were had therein in open court:

29 Mr. RODEY. Q. Mr. Baca, state whether or not you desire to make any correction in the testimony given by you before recess.

A. Yes.

Q. What correction do you desire to make?

A. I think that on the west side I said the Mesa, and on the east the Cerro. I want to state that that is wrong. I recollect better now. The Cerros is the boundary line on the west and the Mesa on the east.

Cross-examination by Mr. POPE:

Q. You were one of the witnesses when the deputy surveyor made this survey, were you?

A. I was the claimant.

Q. You went with the deputy surveyor, did you?

A. No; I asked him if I was wanted, and he said that I was not needed.

Q. How old did you say you were?

A. I am going on 56 years old.

Q. Do you know where the town of Cubero is?

A. Yes.

Q. Is that within or without this grant you claim?

A. Outside.

Q. How long since you lived at Cubero?

A. I lived there when I was young with my father.

Q. Your father lived at Cubero, did he?

A. He lived there for a time.

Q. Did he die in Cubero?

A. Yes; he died in Cubero. He was sick when he was taken there.

Q. Had he been living at Cubero previous to his death for some time?

A. Yes.

Q. Did his family live with him at Cubero?

A. Yes.

Q. What did you say your grandfather's name was?

A. Jose Baca.

Q. What was the name of his father?

A. I do not know. I have been told that his name was Baltazar Baca.

Q. The name of your grandfather was Baltazar Baca?

A. Jose Baca was one of the sons of a son of Baltazar Baca, so I have been told.

Q. Do you know the name of this son of Baltazar Baca that he was a son of?

A. I do not remember.

Q. Why do you say that this relationship exists? What is it based on?

A. Because others have told me that I am descended from this person.

Q. Others have told you?

A. Yes; the old people that lived before.

Q. Your neighbors?

A. The old people said so in conversation and I would hear them.

Q. Do you know where Baltazar Baca lived?

A. He lived in Tome, so I have been told.

30 Q. He never lived at Encinal, did he?

A. I do not know whether he lived at Encinal or not, but I was told by one of my sisters-in-law that she had been told by Juan Sacedra that he knew that ruin existed which had been the house of Baltazar Baca.

Q. Ruin existed where?

A. At the place where the Indians from Laguna lived within this tract.

Q. You also understood that he lived at Tome, did you?

A. Yes, so I have been told, and I know that also from the papers that he lived in Tome.

Q. What is the east boundary of this grant?

A. What grant?

Q. This claim which you are making to this grant.

A. A black mesa—a mesa of black rocks.

Q. How far is it from the town of Encinal?

A. Two or three miles, or three miles and a half.

Q. Which direction from Encinal?

A. From the place where I live it is between the south and the east.

Q. What did you say the south boundary was?

A. That is an old trail that is called Zufi trail, that lies a little below some mesas at the mouth of the cañada.

Q. Is Encinal on a creek or a river?

A. It is on a little stream there; water comes from a spring; the water is very little.

Q. Where do you live at present—how far is it from Encinal?

A. I live at the place Encinal itself.

Q. You live north or south of it?

A. I live on the south, because the cañada is on the south.

Q. You live in the cañada to the north of Encinal, do you?

A. My house is on the lower end of the mouth of the cañada.

Q. How far is your house from the town of Encinal?

A. It is at the place itself that is called San Jose del Encinal.

Q. Who else lives at Encinal?

A. Some of my sons and a niece of mine that is a sister to Manuel Baca.

Q. You all live there together, do you?

A. Yes.

Q. The Laguna Indians occupy most of that part of the country, don't they?

A. They occupy a portion below near the plain at the mesa where the old house used to be.

Q. They have been occupying that land for a good many years, have they?

A. Yes; I have seen them a long time there, and their fathers have been there also; they are now dead.

Q. That is within the boundaries of this grant that you have stated, are they?

A. Yes; it is within the grant.

Q. They claim to own the land around there, do they?

A. They required me about a year ago not to work on a little land that I was farming there.

Q. How much land do you farm?

A. I farm some little strips of land in the cañada and other strips outside of the cañada; I do not know the amount.

Q. How far are the strips outside of the cañada from the strips inside of the cañada?

A. It may be a mile from it, the level land being mostly full of rocks.

Q. How much land do you cultivate in the cañada—how many varas?

A. I have not surveyed them; the land is very small.

Q. How much do you cultivate outside of the cañada?

A. I do not know; it is a bend there.

Q. There is not much land there, is there?

A. No; it is hardly enough for myself and my family.

Q. What direction is that from the land in the cañada?

A. To the south.

Q. Is that the direction where the Indians are?

A. No; the Indians are very far; they have their land above, but they have some little strips there.

Q. They cultivate that as theirs, do they?

A. I have not spoken a word to them about that property.

Q. They cultivate it, though?

A. They cultivate it.

Q. They have cultivated it for a great many years, have they?

A. They have bought some land from a man named Jose Pino.

Q. Is Jose Pino related to you?

A. Yes; he was a cousin; I do not know in what degree.

Q. They occupy a great deal of land there that they did not buy, don't they?

A. Yes.

Q. They did not buy that land from any one that you know?

A. They have bought only from this man Pino.

32 Q. The amount of land you cultivate is not more than ten or 15 acres, is it, altogether?

A. Perhaps it is a little more than that; I do not know.

Q. It is not more than 20 acres at the outside, is it?

A. When I returned in my assessment list it was 30 acres.

Q. That is the land you formerly occupied?

A. Yes.

Q. And all you returned is 30 acres of this whole tract?

A. I have said that more or less; I returned that, more or less.

Q. When you went to this land where did you come from?

A. From Cubero.

Q. Is that where you lived before you went there?

A. I lived there with my father and when he transported himself from that place he brought me with him.

Q. He left this place and went to Cubero to live?

A. From what place?

Q. This place you have mentioned?

A. No; I say that he went there only to die.

Q. You say he lived at Cubero for a number of years before he died?

A. Yes; he lived there some years.

Q. The Navajos have claimed land around in that section for quite a number of years, have they?

A. Yes; they had possession there of this land while they were hostile, but my father gave them consideration of 200 sheep to let him have the land.

Q. And this land in question is the land he bought back from the Navajos, is it?

A. No; he made them a gift in order to get them out of the place.

Q. And they made him a gift of the land?

A. No; they left the land to him.

Q. How many years have they been living on this land?

A. I do not know; I was very little when my father brought me there?

Q. They had been living on it for a number of years?

A. No; they wanted ranches according to what their custom is and from there they would go about to other places.

Q. When you first knew of it they had little ranches there?

A. There were some very rude ranches according to the way the Navajos made them.

Q. Your father never went there to live until he got this land from the Navajos, did he?

33 A. Yes; I was very small; he took me there when I was small.

Q. That was after he bought from the Navajos?

A. I have said that he did not buy from them; I have said that he simply made them a gift.

Q. You mean after he had made this trade with the Navajos?

A. Yes, they were there several years; the house was built there and we would go to the farm in the day and come to town at night because the Indians were hostile.

Q. That is all.

Redirect examination by Mr. RODEY:

Q. You said that you were called by the deputy surveyor who surveyed this grant in 1878 to make an affidavit; is this the paper you had reference to [showing witness exhibit 7 mentioned in the opening of the case] and is this your signature on it?

A. That is my signature.

Q. And that is the paper, is it?

A. That is the paper.

Q. State what boundaries you showed the surveyor and then whether or not you went along the lines as he surveyed them clear around the circumference, or whether you simply showed him one or two boundaries?

A. I gave him the witnesses that went around with him—one of the witnesses is here now.

Q. Did you go around the lines as he surveyed them with you?

A. No; I say that he did not agree for me to go.

Q. You said that you heard of an old ruin which was said to be the house of Baltazar Baca; state how many people you ever heard say that?

A. Only the person that I have said, a sister-in-law who had been told by her grandmother that Mr. Saavedra had told her there was a ruin of the house of Baltazar Baca there, and her grandmother also told that they were the descendant of Baltazar Baca?

Q. Is it generally known in that community that you and your father are descendants of Baltazar Baca?

Mr. POPE. Object as leading and improper method of proving genealogy.

The COURT. Genealogy is one of the matter that is proven by general reputation; he may ask what the general reputation is on that subject.

Q. State what, if anything, the people in that community there say as to who are the descendants of Baltazar Baca there now.

34 A. They say that we are the descendants.

Q. Tell whether or not the people generally in that community say so.

A. Yes; I have heard some of the older people say so.

Q. State whether you are engaged in any other business there except in the cultivation of the soil.

A. My only occupation is the cultivation of the soil.

Q. State whether or not in the years past you have been engaged in stock raising or any other occupation than farming.

A. At one time I had some sheep, but finally I have remained without any; I lost them.

Q. With reference to this treaty between your father and the Navajo Indians, whom he induced to go away from there as you stated, state what caused your father to make a trade with the Navajos.

A. I understood that it was as an heir that he did so, and because the Indians had forcibly taken possession of the land.

Q. State if you have any other home than the home on this tract of land.

A. It is the only one that I have at present.

Q. That is all.

Recross-examination by Mr. POPE:

Q. Did this aunt state whether or not Baltazar Baca lived at this house?

A. I have said that this sister-in-law of mine said that Jose Manuel Saavedra had told her grandmother, and that her grandmother had told her, that Saavedra knew where the house of Baltazar Baca had been.

Q. Did they say whether he lived there or not?

A. Yes; that was what was told by this sister-in-law of mine by her grandmother.

Q. That is all.

Mr. ROPEY: Q. Have you seen this ruin yourself; do you know where it is?

A. Yes.

Q. Is it there yet?

A. Yes; the ruins are there; the stone is around there yet, and the Indians have little ranches there now.

Q. You stated that some of these Indians bought from Pino the land that they are on; state whether or not these Indians are there by the license of any one, if you know.

A. I do not know. They, the Indians, had bought from Pino, and he bought from another Indian by the name of Pagnate.

35 Q. State whether or not you know that the Indians claim under a grant, or whether they claim by license of somebody else.

A. They were there, I think, because they went there to live because they liked the place.

Q. How many of them are there?

A. I do not remember whether there are 13 or 14; below there is a little pueblo on a little stream of water.

Q. Is this little pueblo that you speak of north of the south line of the grant you claim?

A. It is south of it, to the south, below.

Q. State whether or not they are inside of your grant lines.

A. Within.

Q. Then they are north of the south line?

A. Yes; to the north.

Q. Are they near the south line or far from it?

A. They are far from the southern boundary line; there is another little pueblo that lies right near the line within the boundaries.

Q. You say there are 12 or 14 people there now?

A. In the upper one; I do not know how many there are in the other one.

Q. About how many families, heads of families?

A. 14 heads of families in the little pueblo, counting those that have come lately there.

Q. Do you mean heads of families or 14 people in all?

A. 14 heads of families.

Q. State whether or not if these Indians have ever heretofore claimed any right to that land as against you.

A. They have never done so.

Q. Who was it that made this claim about a year ago that you mentioned?

A. I do not know if it was last year or this year in the month of March.

Q. But it was after you had filed your petition for this grant?

A. Yes.

Q. Have you got that little newspaper that you showed me?

A. Yes (hands Mr. Rodey a paper).

Mr. RODEY. I have here a copy of the Spanish edition of the New Mexican of December, 1880, nearly 16 years ago, where this man is advertised with reference to his rights to this grant for his claim, which I can identify and offer in evidence.

Mr. POPE. It is simply a declaration that he claimed land at that place.

Q. State whether or not you ever put any notice in any newspaper about your claim to this grant.

36 Mr. POPE. We object, as it is immaterial.

Justice MURRAY. Q. Did he file his claim before the surveyor-general?

A. Yes, sir.

The COURT. We do not think it is material.

Q. That is all.

Mr. POPE. Q. Juan Antonio Pino bought this land from an Indian named Paguante?

A. Yes.

Q. That is all.

Mr. RODEY. That is all.

JOSE JUSTO SAAVEDRA, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified upon direct examination by Mr. Rodey as follows:

Q. State your name, age, and residence.

A. My name is Jose Justo Saavedra; I am going on 72 years of age; I reside in Cubero and in Cevilleta and in all that country.

Q. How many years have you lived out there?

A. Since I was born I have always lived there.

Q. Do you know the witness who last testified here by the name of Margarito Baca?

A. I know him.

Q. How many years have you known him?

A. I know him since I was born.

Q. Did you know his father?

A. Yes.

Q. What was his father's name?

A. Marcos Baca.

Q. Did you know his grandfather?

A. I did not.

Q. Do you know from any source what the name of his grandfather was?

A. I think he was Jose Baca.

Q. State whether or not it is known in that community as to who Jose Baca was, as to whether or not he was related to Baltazar Baca.

A. He was the grandson of Baltazar Baca.

Q. State how you know that fact.

A. From my own old people.

Q. Do you know a tract of land known as the San Jose del Encinal tract of land or Baltazar Baca grant?

A. Yes.

Q. Where is that located?

A. It is between Cubero and Cebolleta and Laguna.

Q. State if you know where Margarito Baca, the petitioner, lives.

37 A. He lives at San Jose del Encinal.

Q. State if that is upon the tract of land that I have just asked you about.

A. Yes.

Q. Were you well acquainted with the father of this petitioner, that is Margarito Baca?

A. Yes.

Q. What relation did you bear to him during his lifetime, if any?

A. We were neighbors.

Q. They have been living there for quite a number of years in that country?

A. They have lived there for a long while.

Q. I believe that is all.

Mr. POPE. No cross-examination.

MANUEL BACA, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified upon direct examination by Mr. Rodey as follows:

Q. State your name, age, and residence.

A. My name is Manuel Baca; I am 63 years of age; I reside in Cubero.

Q. How many years have you lived there?

A. I have lived there since I was born.

Q. Do you know the petitioner for this grant, this witness who testified, Margarito Baca?

A. Yes.

Q. How many years have you known him?

A. Since I was born.

Q. Did you know his father?

A. Yes.

Q. What was his father's name?

A. Marcos Baca.

Q. Did you know his grandfather?

A. No.

Q. Do you know from any other source what the name of his grandfather was?

A. I understand from Marcos Baca that his father was Jose Baca.

Q. Did you ever learn around there from any other source?

A. I knew that also from Marcos Baca himself, because I worked in the house of Marcos Baca with him.

Q. How many years did you work for Marcos Baca?

A. Since I was able to work until I got married, because he was the one that paid the expenses of my wedding.

Q. Then you were in his employ until you got married?

A. Yes.

38 Q. Do you know the tract of land that Margarito Baca is petitioning for known as the Baltazar Baca grant, or San Jose del Encinal tract?

A. Yes.

Q. Where is it located?

A. It is there at Encinal.

Q. Do you know the boundaries of that grant?

A. Some of them.

Q. State those that you know.

A. The Cerro Pich, the trail to Jemez, and the Black Mesa that is on top of the mountain.

Q. Now state whether Marcos Baca, the father of this petitioner, lived upon that tract of land which you have designated in these boundaries?

Mr. POPE. Object as leading and suggestive.

No answer.

Q. State where Marcos Baca, the father of Margarito Baca, lived.

A. He lived at Encinal until he died, and after he died his son remained there.

Q. Who do you mean by his son?

A. Margarito Baca.

Q. State if there are any ruins upon the grant in any different portions of it?

A. When I was working for Marcos Baca I saw very old ruins at that place.

Q. State if anybody ever stated to whom that belonged; and if so, to what people they belonged to.

A. Marcoa Baca stated himself that they were the ruins of the house of his grandfather.

Q. Did you ever hear Baltazar Baca's name in connection with any ruins there?

A. Yes.

Q. Now then state whether or not the ruins that were mentioned in connection with Baltazar Baca's name, and what the people said there about those ruins.

A. Marcos Baca said that they belonged to his grandfather.

Q. Did you ever hear anybody else besides him say the same thing?

A. I did not hear anybody else; I heard him say it because he lived there alone, and his friends used to go to call on him and converse, and I would hear them say so in conversation.

Q. How far from any neighbors, when you were a boy, did Marcos Baca live?

A. His nearest neighbors lived at Cubero and others in Chupadero.

Q. About how far away from where he lived?

A. I do not know how far from Cubero is Encinal.

Q. How many miles is it?

A. I do not know.

Q. About how long would it take you to walk it?

A. When I worked for him I went there on horseback.

39 Q. Did it take you an hour or two hours to go?

A. Two hours at most.

Q. Where does Margarito Baca live?

A. In Encinal.

Q. Where does he live with reference to the place where his father lived?

A. Before he got married he lived there with his father, and after he got married and his father died he went to live at Encinal.

Q. Is he still living there?

A. Yes.

Q. What, if any, relation was Jose Baca to Baltazar Baca, if you know?

A. I know something; I know that this Jose Baca was the son of Baltazar Baca.

Q. Then you mean that Baltazar Baca was Jose Baca's grandfather?

A. So I understand.

Q. That is all.

Cross-examination by Mr. POPE:

Q. You say that you have lived at Cubero all your life?

A. Yes.

Q. Have you ever lived anywhere else?

A. I was in Cebolleta for a while as attending to Pablo Pino.

Q. Outside of Cebolleta you have lived at Cubero all your life?

A. Yes.

Q. Never lived anywhere else?

A. I have gone on trips to other places, but my property has been at Cubero.

Q. Your house has always been at Cubero?

A. Yes.

Q. When you worked for Marcos Baca he lived at Cubero, did he?

A. Yes.

Q. And you say you worked for him up to the time you were married?

A. When I lived in Cubero he had already died.

Q. When you worked for him he lived in Cubero did he?

A. Yes; and in Encinal.

Q. You say you have never lived anywhere else?

A. Because the Navajos were hostile.

Q. You say you worked for him up to the time you were married?

A. Yes.

Q. You say you have always lived in Cubero, do you?

A. Yes.

Q. And while you worked for him he lived in Cubero?

A. Yes.

Q. Where did he die?

A. In Cubero.

Q. Died in Cubero?

A. Yes.

Q. You were working for him when he died?

A. I think I was already married.

Q. You were married just a short time before he died?

A. Yes.

40 Q. There are quite a number of Indians living in the neighborhood of Encinal, are there not?

A. Yes.

Q. They have been living there for a great many years, have they not?

A. Yes.

Q. They plant land around there, don't they?

A. Yes.

Q. That is all.

Redirect examination by Mr. RODEY:

Q. What is the court to understand from your testimony, Mr. Baca, that Marcos Baca raised you, or that you were merely a servant of his?

A. He did not raise me; my mother was a poor woman, and when I was able to work she hired me to Marcoa Baca.

Q. You say he lived at different times at Cubero and at other times at Encinal because the Indians were hostile?

A. Yes.

Q. Now state if he had a house at Encinal.

A. He had a very large house.

Q. Describe it, and whether he kept a ranch, and what his business was?

A. He had a house there; he farmed land, and he had stock there.

Q. Did he farm much land or little?

A. He farmed all the land that he had in the vicinity of his house.

Q. State, if you know, how many years he lived on that grant.

A. He lived there until he died in the way I have stated between Cubero and Encinal. When he died he happened to be at Cubero, and he died there.

Q. How long had he been living at Cubero when he died?

A. I think he was there only when he was sick.

Q. Now state, if you know, whether or not Jose Baca, the father of Marcos Baca, had lived on this grant.

A. I do not know.

Q. State whether or not you ever heard any of the old people say whether or not he had lived there.

Mr. POPE. Object as leading, and besides it is not redirect examination.

No answer.

Q. That is all.

Recross-examination by Mr. POPE:

Q. The land that Margarito Baca has now is the land his father had, is it?

A. Yes.

Q. That is, all his father had is just what he has?

A. Yes.

Q. That is all.

Mr. RODEY :

Q. State whether or not you ever heard Marcos Baca claim this grant in his lifetime.

41 Mr. POPE. Object as leading and immaterial.
The COURT. Change the form of it.

Q. State whether or not you ever heard Marcos Baca in his lifetime claim the Baltazar Baca grant.

A. That is what he said, that his father was Jose Baca and his grandfather was Baltazar Baca; he did not tell me that, but he told it to some other people.

Q. State whether or not you heard him tell these people about the grant. State if he spoke about this tract known as the Baltazar Baca grant.

Mr. POPE. Object as immaterial.

The COURT. He may answer.

A. Yes; in conversation in my presence.

Q. That is all.

Mr. POPE. That is all.

MARGARITO BACA, recalled for the plaintiffs.

Q. Tell the court whether or not you know the year in which your father was born?

A. He was born in the year nine; you can calculate from that how old he would be now.

Q. That is all.

Cross-examination by Mr. POPE:

Q. How old was your father when he died?

A. He died in '60 or '61; I do not remember well.

Q. That is all.

Col. WALTER G. MARMON, a witness of lawful age, being produced, sworn, and examined on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. State your name.

A. My name is Walter G. Marmon.

Q. Where do you live?

A. At Laguna, Valencia County, New Mexico.

Q. How long have you lived there?

A. Since 1871.

42 Q. Are you acquainted with a tract of land called the Baltazar Baca or San Jose del Encinal grant?

A. I have heard of it, and know of it as surveyed.

Q. Who lives within the outboundaries of the grant at the present time?

A. There a number of Laguna Indians living within the limits, and Margarito Baca and his family.

Q. What other Mexican families than Margarito Baca and his family live on this tract, if you know?

A. I do not know of any others.

Q. Are you pretty well acquainted with the country that this tract covers, with a view of deciding who lives there now?

A. I am, sir.

Q. Where does the family of Margarito Baca live on this tract?

A. About a mile and a half north of the village of Encinal.

Q. On what stream, if any, do they live?

A. They live in what is known as the Encinal Canon.

Q. Have you ever been to the place where this family lives?

A. I have.

Q. What is the amount of ground which they now cultivate, if you know?

Mr. RODEY. Object as immaterial.

A. I should think in the neighborhood of 20 acres; probably a little more, probably a little less.

Q. Where is it located with respect to this canon?

A. A portion of it is inside of the canon and a part is along the edge of the foothills south of the canon.

Q. How long has he been living there? Does he occupy, cultivate, or use any land other than this you have mentioned?

A. I have known of his living in Cubero, and I think he claimed some land in Cubero.

Q. Within the limits of this grant, does he occupy or cultivate any land outside of these 20 acres you mentioned?

A. Just these small pieces near where he now lives.

Q. How long has he been living there at Encinal?

A. I am not positive of the time, but I have known the place since 1871, since the winter of 1871, and he has been there at times, and other times he was not there; but I could not state the exact times.

Q. How many Indians live within the outboundaries of this tract?

A. There is about 100 Indians; something near that; the enumeration in '90 gave about a hundred, I think, of Laguna Indians.

43 Q. Where do they live in the main on this tract, above or below Margarito Baca?

A. They live below his place.

Q. Do any live above him?

A. No.

Q. Who occupies the tract above where he lives?

A. Above is the boundaries of the Laguna grant and the Cebolleta grant and patented lands claimed and held by the owners of that grant. There is no one living there at present; there are some abandoned houses, occupied some years ago.

Q. By whom?

A. By some of the people of Cebolleta; I do not know exactly whom.

Q. What is the appearance of these houses as to antiquity or otherwise?

A. They are not in very good repair at present; they are irregular houses; I saw them last year.

Q. South of this Cebolleta grant and north of Margarito Baca is anybody occupying that property?

A. There is no family; no one living there; no one cultivating.

Q. Where do the Indians south of Margarito Baca live with respect to the settlement known as the San Jose del Encinal?

A. I do not know any place by the name of San Jose del Encinal. The village of Encinal is where the Indians live.

Q. How many live there?

A. At the town of Encinal there is about 100, according to the count in 1890—some 15 or 18 families.

Q. Is that north or south of the south boundary of the San Jose del Encinal grant as claimed?

A. It is north of the south boundary; it is within that tract as claimed.

Q. How far north is it?

A. As surveyed, a mile and a half north of the south boundary; probably a little more.

Q. What do these people at Encinal do for a living?

A. They are farmers and stock raisers; they cultivate the land in the valley north and south of this village.

Q. How far north?

A. I should think a mile and a half; probably two miles north of the village, but in the foothills up to the cultivated lands of Mr. Baca.

Q. How far south?

A. They cultivate in that valley for—you mean inside of this grant?

44 Q. Yes, sir?

A. Well, to the south boundary of it.

Q. Have they any flocks?

A. They have herds of sheep, some cattle, horses, and burros.

Q. Where do these pasture with reference to the grant in question?

A. Their herds of cattle, horses, and burros pasture in the vicinity of their homes of the town, and their sheep are generally pastured at a distance, traveling to different places; they do not herd their sheep around the settlements as a rule.

Q. In which direction from Encinal?

A. North and to the south, and on unoccupied lands out of the line.

Q. How far north of Encinal do they pasture their flocks?

A. Well, not very far north, because the Cebolleta grant comes in.

Q. Do they pasture as far as the Cebolleta grant?

A. Yes, sir.

Q. How long have the Indians been occupying that land, if you know, in that manner?

A. Since I can recollect they have been living in that way; of course, for years before that by common repute.

Q. Have you ever heard of the Paguete purchase?

A. I have.

Q. Who claims the land included within that purchase?

A. The Laguna Indians.

Q. How far north does that purchase extend?

A. I am not exactly certain in regard to the north boundary, but it is two or three miles north of where Margarito Baca lives.

Q. How far south does it extend?

A. It extends about three miles probably south of the Baca place.

Q. Where is it situate with reference to this Baca place?

A. As it is shown on the map the south boundary of the Paguete is a little north of the south boundary as shown on the map of the survey of this Baltazar Baca grant; with reference to the natural objects that is taken as the south boundary, then it would extend further south, the natural objects as given to-day.

Q. Are you acquainted with the natural objects which form the boundaries of the Cebolleta tract as claimed at the present time, as patented?

A. No, sir; I am not.

Q. Are you able to state as to whether or not the outboundaries
45 of the Baltazar Baca tract lie within the outboundaries of the Cebolleta tract?

A. A portion of the Baltazar Baca tract lies within the limits of the patented lands of Cebolleta.

Q. Where does the rest lie?

A. It lies within the patented lands of the Laguna Indians and the Paguete purchase.

Q. Do you know how old the settlement of Cebolleta is of your own personal knowledge by general reputation as to age in that community?

A. No, not exactly; it is a very old settlement.

Q. That is all.

Cross-examination by Mr. RODEY:

Q. You say you never heard of a place called San Jose del Encinal in that vicinity; is that a fact?

A. That is the fact.

Q. Now, is Encinal known as Encinal Canon?

A. Yes, sir.

Q. You were the notary before whom all the witnesses who pointed out the boundary calls for the surveyor who surveyed this land in 1878, testified, were you not?

A. I believe I took the testimony as notary, but whether they pointed these places out to the surveyor I do not know; I simply took the testimony.

Q. With reference to these Indians who lived south of Margarito Baca, as a resident of the pueblo of Laguna, as told you, that that was purchased by them, was it not, and they never claimed any grant there, did they?

A. The Paguete was confirmed to them by the Spanish or Mexican Government, and this tract is a part of that grant.

Q. But they had to make an effort before Congress in order to get the land included or attached to that pueblo of Laguna grant, did they not?

A. I do not know; it was confirmed to them in 1859, before I had any particular knowledge of the grant.

Q. Margarito Baca lived on this grant when you first knew it, did he not?

A. I am not positive about the first time I passed that place; I was near the vicinity of it; I do not think he was there then; it was in the winter of 1871 or spring of 1872, about January, 1872, or December, 1871.

Q. But his ranch and houses were there?

A. There was a ranch and houses there, but I think at that time there was no one living there to the best of my recollection. At that
46 time Mr. Baca was justice of the peace in Cubero, and after that he was living in Cubero.

Q. That is all.

Mr. POPE. We want to tender in evidence the papers in reported

number 30 from the surveyor-general's office, which pertain to these purchases (Def. Ex. A). Also plat of the Cebolleta grant, surveyed August 8, 1876, being No. 46 (Def. Ex. B); and plat No. 30, dated March 8, 1877 (Def. Ex. C); and plat number "S," made September, 1877 (Def. Ex. D).

Mr. RODEY. We object to these papers and plats as being immaterial, the grant made to the petitioner being many years older than that of the Cebolleta grant.

The COURT. Take a recess until ten o'clock to-morrow.

The hour of ten o'clock, of August 25th, 1896, having arrived the further hearing of the above-entitled cause was resumed, and the following proceedings were had therein in open court:

FRANCISCO KOKI, a witness of lawful age, being produced, sworn, and examined on the part of the Government, testified upon direct examination by Mr. Pope as follows:

Q. What is your name?

A. Francisco Koki.

Q. Where do you live?

A. In Paraje.

Q. How long have you lived there?

A. It is a long time that I have been living there.

Q. How old are you?

A. About 60 years old.

Q. Where were you born?

A. Paguete.

Q. Do you know Marcos Baca?

A. Yes.

Q. When you first knew him were you grown or were you a boy?

A. Since I was little.

Q. Where did he live when you first knew him?

A. When I knew him he lived in El Rito.

Q. Did he always live in El Rito?

A. No; he then lived in Cubero.

Q. Did he always live in Cubero then?

A. Yes; he lived in Cubero.

Q. Did he ever live at or near Encinal?

A. Yes.

Q. State if you know how he got the property at or near Encinal.

A. He bought from the Navajos.

47 Q. Did he ever live there before he bought from the Navajos?

A. No.

Q. Where did he live before that?

A. In Cubero.

Q. Did he ever claim this land before he bought it from the Navajos, to your knowledge?

A. No.

Mr. RODEY. We object to the question and answer; this man could not know what he claimed except casually.

Q. How old were you when he bought from the Navajos?

A. I was already a man when he bought.

Q. How long had the Navajos been in the possession of this land when he bought it?

A. I do not know; the Navajos were already there when I was a child; I do not know how long they had been there.

Q. What were they doing on the land?

A. The Navajos planted strips of land.

Q. Were they planting land at the place where Marcos Baca bought?

A. Yes; at the place where he bought they planted.

Q. Are there any Laguna Indians living at Encinal?

A. Yes; the Lagunas were living there then.

Q. How long had they been living there then previous to that time?

A. It had been a long time, when I was a child; since the time that he was planting there the Lagunas were planting.

Q. Were they living there when you were a child?

A. Yes.

Q. Are they living there yet?

A. Yes; they are living there now.

Q. Did Marcos Baca ever make any objection to the Indians occupying or holding those lands during his lifetime to your knowledge?

Mr. RODEY. Object as immaterial; they might have been there by his license.

The COURT. Note the objection.

A. Yes; the Indians were planting there then.

Q. Did he make any objection to their planting there, or to their using the land at any time?

A. Yes; he occupied the Canon del Encinal.

Q. Did he make any objection to their occupying and planting the land around there outside of the land he was occupying?

A. When the old man Marcos Baca was living he did not object; it was not objected to until now.

48 Q. What did the Laguna Indians do on this land besides planting when you were a boy; what have they done?

A. They were farming; they had little strips.

Q. Did they have any flocks—have they had any?

A. Yes.

Q. Where did these flocks herd?

A. They pastured all over that place in the canon and on the mesas.

Q. Did Marcos Baca ever object to their pasturing their flocks there?

A. No.

Q. Do you know any ruins near the place where Encinal is now, near the mouth of the canon?

A. Yes.

Q. How long have you known those ruins?

A. When I was a little boy I already knew of the ruins.

Q. Were they new ruins then or old ruins?

A. They were old ruins—ruins of olden times?

Q. Did the old people ever tell you what ruins these were?

A. Yes; the old people said that these ruins were a very old ruin.

Q. How old were the people that said that, as old as you are?

A. No; they are much older than myself.

Q. Did you ever examine these ruins?

A. Yes; I have been there with an uncle of mine by the name of Pino, taking stones out for building purposes.

Q. What did you find within these ruins, if anything?

A. I know, because I was working with my uncle and digging in the ruins and I saw broken pottery and the remains of broken metates and the ends of metates, grinding stones.

Q. Did the old people ever say anything as to whether these were Mexican ruins or Indian ruins?

A. The old people say that they were Indian ruins of long ago.

Q. Did you ever hear anyone say that they were the ruins of Baltazar Baca?

A. No; I never heard it so.

Q. That is all.

Cross-examination by Mr. RODEY:

Q. You say that you are about 60 years old?

A. Yes.

Q. Marcos Baca was a man grown and a man of family before you were born, was he not?

A. Yes; he was grown; he had a family.

Q. Then he may have lived there before you were born and you not know anything about it, may he not?

A. Yes; when I was already grown he lived there.

Q. When you were a small boy the Navajos were hostile and used to drive people away from there, were they not?

A. Yes; the Navajos always lived there and they did not harm us.

Q. Did the Navajos never drive your parents into Cubero while you were a boy?

A. No.

Q. When Marcos Baca went to live there at Encinal, what sort of a house did he go into; did he build a house, or did he go into one already there?

A. There was only a little ranch belonging to the Navajos there; there was no house; the house was built when Marcos Baca went there.

Q. Were there any jacales houses there at that time?

A. Yes.

Q. Isn't that the sort of houses people lived in there generally in those times for a whole generation during the whole lives of people?

A. Yes; the Navajos always lived in jacales; but our people always lived in more substantial houses with stone.

Q. When Marcos Baca went to live there you say he bought land from the Navajos?

A. Yes.

Q. Well, now, didn't you know that he simply paid the Navajos 200 sheep to go away from there and leave him what he claimed as his own alone?

A. No; I do not know that he paid 200 sheep to the Navajos to go out of that place; I only know that he bought.

Q. You are about the same age, or just 4 years older than this man Margarito Baca?

A. I do not know which one is the oldest; I was already his size when he was living in Cubero.

Q. You were boys together and grew up together within a mile of each other, were you not?

A. Yes; I had a little farm right near there and I had always seen him.

Q. You saw the Indians there buy lands from Marcos Baca many times during your life?

A. Yes; I heard it said that he bought from the Navajos.

Q. I want to know if you did not see the pueblo Indians buy lands from Marcos Baca?

A. No; I never heard it said.

50 Q. Did you ever hear any of the old people speak about Baltazar Baca?

A. Yes; the old people mentioned the name of Baltazar Baca, but I did not know him.

Q. Did they mention his name as having been a resident of that vicinity years before?

A. No.

Q. In what connection did they mention his name? What did they ever say about him?

A. No; they said nothing.

Q. You say that you heard his name there of Baltazar Baca?

A. Yes; I heard that.

Q. Now, then, tell the court what the people said about him, if anybody ever spoke about him—where he lived or where he had lived.

A. Yes; they said that he had lived at a place called Macana, pueblo Cubero.

Q. Do you know a mountain there called Picacho?

A. Yes.

Q. Well, now, did Baltazar Baca live on the side the sun rises or on the side that the sun sets of that mountain?

A. Yes; I heard it said that he lived on the side where the sun sets, near Cubero.

Q. Did you ever go to the place?

A. Yes; I went there several times, but when I went there he was not there any more; but I heard that he had been there.

Q. Where were those ruins that you say you dig in and got metates out of, and the broken pottery?

A. Yes; right there at the place where I dig, because the pieces of pottery are very small and are useless.

Q. How near to the present residence of this man Margarito Baca?

A. I do not know the distance; it may be a mile or more.

Q. And these are stone ruins of a stone house?

A. Yes.

Q. Did you find any other things in these ruins besides the metates and the broken pottery? Did you find any iron utensils of any sort of fragments?

A. No; I did not see any iron utensils; only broken pottery and metates.

Q. When you were a small boy all the Spaniards of New Mexico

lived just like the Indians and had the same pottery and cooking utensils as the Indians?

A. Yes; they also had earthenware, but not of the kind that the Indians had; they would sometimes use pottery that the Indians made.

Q. You say that your uncle Pino and yourself dug in those ruins?

51 A. Yes; my uncle dug there; I was there, but I was a boy.

Q. Was your uncle a very old man then?

A. Yes; he was an old man.

Q. Did your uncle Pino ever tell you about the neighbors that he used to have there when he was a little boy in that vicinity?

A. Yes; he had there a planting piece of land, and at that time Marcos Baca was already *ax* in the canon.

Q. Did your uncle Pino ever tell you about Jose Baca, the father of Marcos Baca?

A. No; he never told me that Jose Baca was the father of Marcos Baca.

Q. Did any old people ever tell you that Jose Baca was the father of Marcos Baca?

A. Yes; they said that Jose Baca was the father of Marcos Baca, but I did not know him.

Q. Did any of your old people ever tell you that Jose Baca lived there at Encinal, or near to the line of the pueblo in the canon?

A. No; I did not hear it said that Jose Baca lived there; I only heard it said that Marcos Baca lived there since that time when he bought from the Navajos.

Q. Ask the interpreter if this man just said that or whether he said it himself?

A. (The interpreter.) No; how am I going to state what he did not say?

Q. Well, tell him not to; we don't want him to. Where did your uncle Pino get his name of Pino? Did he get it from Joaquin Pino that used to live east of Laguna many years ago?

A. When the priest baptized him they gave him that name.

Q. Was it because he was brought up by a Pino?

A. His father had the name Pino.

Q. Didn't your uncle Pino tell you when he was a small boy that the Pinos and the Bacas were neighbors?

A. Yes; they said that they were neighbors.

Q. When you were a very small boy didn't the people of Paquate tell you that Encinal had been abandoned some years ago because of the hostility of the Navajos?

A. No.

Q. You never heard of that?

A. No.

Q. The Navajos have no reservation right around there; it is as much as 50 miles to their reservation, is it not?

A. Yes.

52 Q. Are there any ruins on the mesa at the side of the canon below where Margarito Baca lives?

A. There is a ruin below the place where Margarito Baca lives.

Q. Did you ever know of the Navajos to buy the right to live there from Marcos Baca in your lifetime?

A. Yes.

Q. How many of them?

A. I heard it said and I knew it of my own knowledge that he bought there from the Navajos.

Q. Did you ever know of a Navajo to buy the right to live there from Marcos Baca before the time you say Marcos Baca came there to live himself?

A. Yes; I knew a Navajo before he bought there.

Q. Well, then, didn't you know that Marcos Baca paid these Navajos for their improvements to go away, and that is the reason why these all went away; left?

A. I do not know how he bought; when he paid for it. I knew that he had bought, but I did not know what he paid.

Q. That is all.

Redirect-examination by Mr. POPE:

Q. The reservation you spoke of as being 40 or 50 miles away, is that the reservation that you refer to; the Navajo Reservation?

A. Yes; the reservation is far away. I do not know how many miles away it is.

Q. That is the present reservation; do you mean that; that is, the place where the Navajos live now is 40 or 50 miles away?

A. Yes.

Q. Do you know where the Encinal Canon is?

A. Yes.

Q. How far are these ruins that you refer to from the mouth of that canon?

A. About a mile; a little more, perhaps.

Q. From the mouth of the canon?

A. Yes.

Q. Was your Uncle Pino an Indian?

A. Yes; he is a Laguna Indian.

Q. Where did he live?

A. He lived first in Laguna and then he moved to Encinal.

Q. Where did your uncle live when he was a boy; did he ever tell you?

A. Yes; my uncle told me that he always lived in Encinal. He had his cows there and herded them there and planted there.

Q. Before that he lived at Laguna, you say?

A. Yes; when he was a boy he lived in Laguna, because he was born there.

Q. Was that the place where he was a neighbor of the Bacas?

A. Yes.

53 Q. How old was he when he lived at Encinal?

A. I do not know how old he was; he was already a man when he went there to live.

Q. Was that before or after Marcos Baca bought from the Navajos that he went to live there?

A. Marcos Baca went to live there after. There were people living there already when Marcos Baca went there.

Q. You mean to say he went there after your uncle went there?

A. My uncle lived at Encinal before Marcos Baca had bought.

Q. Did he live there before Marcos Baca lived there?

A. Yes; my uncle was already living there. There were other men living there also.

Q. Did you say that a Navajo bought from Marcos Baca?

A. Yes.

Q. State whether or not a Navajo bought land from Marcos Baca.

A. Yes.

Q. Was that before or after Marcos Baca lived there?

A. No; he went to live there when he bought; he did not live there before.

Q. Where was the place that the Navajo bought land from Marcos Baca; what place?

A. There in the cañon; he bought land in the canon.

Q. Did the Navajo buy land from Marcos Baca, or did Marcos Baca buy land from the Navajos?

A. Marcos Baca was the one that bought.

Q. Marcos Baca was the one that bought, then?

A. That is what I have said; Marcos Baca bought.

Q. Did a Navajo ever buy land from Marcos Baca?

A. Yes.

Q. Where?

A. There in that canon.

Q. How far was that place where Marcos Baca bought from the Navajos, or was it the same place?

A. Yes; at that place, where they are living now. That is the place that he bought.

Q. That is the place who bought?

A. Marcos Baca bought there.

Q. Where did the Navajo buy; did a Navajo buy land from Marcos Baca?

A. Yes; a Navajo bought from Marcos Baca.

Q. Was this the same land that Marcos Baca bought from the Navajo?

A. Yes; there in that canon.

Q. Is it the same land that Margarito Baca has now?

A. Yes.

Q. That land was the only land that was involved in any trade between Marcos Baca and any Navajo?

A. Yes.

Q. Was there ever a mission for the Navajos at Encinal that you ever heard of from the old people, a Spanish mission? I will withdraw the question.

54

Q. How many months are there in a year, Mr. Kiko?

Mr. RODEY. Object, as immaterial, cross-examining his own witness.
The COURT. Sustained.

Cross-examination by Mr. RODEY:

Q. You live on the land that is within this grant that is now claimed here, do you?

A. Yes.

Q. The name Encinal is the name the Spaniards gave to that place; it comes from the trees that grow along the brook, little oaks?

A. Yes.

Q. That place was named by the Spaniards, was it?

A. Yes; the Spaniards called it so on account of the oaks.

Q. Did anybody ever point out to you any place where the Spaniards were amongst the oaks there any old church?

A. No.

Q. Is there any old ruins of a church south of where you live and between that and the old Zuñi road?

A. There is a ruin lies below, near the Zuñi trail.

Q. When you heard of Baltazar Baca, when you were a small boy, from the old people that lived around where you did, did you ever hear of his having been once governor of the pueblo of Laguna?

A. No.

Q. Never heard of that?

A. No.

Q. That is all.

Redirect examination by Mr. POPE:

Q. Is this ruin that you last described the ruin you mentioned before?

A. Yes; that is, below.

Q. How far are those ruins below Encinal?

A. I do not know how far it is; it is a little below.

Q. You say it is south of the Zuñi road?

A. Yes; it is towards the south, below.

Q. Below the Zuñi road?

A. The ruin is above, and the Zuñi trail lies below.

Q. Have you ever heard of these ruins in connection with the Acoma Indians?

A. No.

Q. That is all.

Recross-examination by Mr. RODEY:

Q. The ruins where you dug the pottery are north of the place where you live, are they not?

A. Yes; it is above.

55 Q. And the other ruins where the old church is is below?

A. What church do you mean?

Q. The old ruin you spoke of near the Zuñi road.

A. That ruin is above the trail.

Q. But below where you live?

A. No; the ruin is above; I live below.

Q. You have spoken of two ruins here, have you not?

A. No; I did not say that there are two ruins; I say that there is one ruin.

Q. Well, there is one ruin down near the Zuñi trail, is there, and there is another one up in the mouth of the cañon, where Margarito Baca lives, five miles north, is there not?

A. I have been saying here that the ruin is above, near the mouth of the canon, and then you asked me about the Zuñi trail.

Q. That is all.

Mr. POPE. That is all.

FRANCISCO ALONZO, a witness of lawful age, being produced, sworn, and examined on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. What is your name and where do you live?

A. My name is Francisco Alonzo; I live in Pagnate.

Q. Where were you born?

A. In Pagnate.

Q. How old are you?

A. I am about 90 years old, a little more.

Q. Where have you lived all your life?

A. I have always lived at Pagnate.

Q. Did you know Marcos Baca?

A. Yes.

Q. How old was he when you first knew him?

A. I was already a man when I knew him; he was my friend.

Q. Where did he live when you first knew him?

A. When I knew him he was living in El Rito.

Q. Where did he live after that?

A. In Cubero.

Q. Where did he live after that?

A. After he lived in Cubero he lived in Encinal.

Q. How old was he when he went to live in Encinal?

A. I do not know how old he was when he lived there; he was already an old man.

Q. Do you know how he got this land at Encinal?

A. He bought from a Navajo that place at Encinal.

56 Q. Did you buy any land there also?

A. Yes; I also bought.

Q. Who did you buy from?

A. From the Navajo by the name of Tagatila.

Q. Did he buy from the same man or a different man?

A. He bought from another Navajo who had lands above; a Navajo from whom I bought had his lands below.

Q. How do you know he bought from the Navajo?

A. When he bought he told me so that he had bought from the Navajo.

Q. Did he go there to live?

A. Yes; he went to live there then.

Q. Did he ever live there before he bought from the Navajo?

A. No; he did not go to live there before; he went to live there when he bought.

Q. Where did he live before he bought?

A. In Cubero.

Q. What were the Navajos doing with these lands at that time?

A. They were planting strips of land there.

Q. How long had the Navajos been there?

A. The Navajos had been there a long time.

Q. Were they there when you were a boy?

A. Yes; when I was a boy the Navajos were there already.

Q. Did the old people say as to whether or not they had been there before you were born?

A. Yes; the old people said that before I was born the Navajos lived there already.

Q. Do you know whether the Navajos were planting in these places that Marcos Baca bought?

A. Yes; the Navajos planted there.

Q. Did Marcos Baca ever claim this land or any of it before he bought from the Navajos?

A. No.

Q. How far was the land you bought from the land of Marcos Baca?

A. It is only a short distance; there is a little pass; there is a ridge between the places, and the one I bought is above and the one he bought is below.

Q. Do the Lagunas live and plant around that place now?

A. Yes; the Lagunas are planting below.

Q. Do you know where Encinal is; do they plant there?

A. Yes.

Q. How long have they been planting there?

A. They have been planting there for a long time; I was a little boy when I saw them planting there already.

Q. Did you ever learn from the old people as to whether or not they had been planting before you were born at these places?

A. Yes, the old people were planting there already.

Q. Did Marcos Baca while you knew him ever object to the Indians planting at these places?

Mr. RODEY. Object as immaterial.

The COURT. He may ask it.

A. No; he never objected.

Q. Did Marcos Baca ever claim that tract that you are living on next to him?

A. No; never.

Q. When was it he first claimed that land there around Encinal?

A. It was a little; it had been three or four years that he had been telling that it is his.

Q. Are you referring to Margarito Baca or Marcos Baca?

A. Margarito Baca.

Q. When did Marcos Baca ever claim any land there?

A. It is a little while, about 4 years now; before, when his father lived there, he did not say anything.

Q. Did Marcos Baca claim any lands there before he bought from the Indians?

Mr. RODEY. Object as leading.

A. No.

The COURT. Take a recess now until two o'clock p. m.

August 26th, 1896, at ten o'clock a. m., the further hearing or the above entitled cause was resumed by the court, and the following proceedings were had therein in open court:

Continuation of direct examination of Francisco Alonzo, by Mr. Pope:

Q. Do you know of any ruins in the neighborhood of Encinal?

A. Yes.

Q. Where are they with reference to the mouth of the cañon?

A. They are a little below the mouth of the cañon.

Q. How long have you known these ruins?

A. I have known them for many years.

Q. Did you know them when you were a boy?

A. Yes.

Q. Were they new ruins or old ruins when you were a boy?

A. They were old ruins.

Q. Did the old people state anything as to where these ruins were when you were a boy?

A. Yes; they said that they were old ruins.

Q. Did they say whether they were Mexican or Indian ruins?

A. They did not say that they were Mexican ruins. They said that they were ruins of the Indian people.

Q. Did you ever examine these ruins?

A. I never went there to dig, but went there to see the ruins only.

Q. What did you see?

A. Yes; I saw there broken pottery and some kind of stones that were used by ancient people there, like metates.

Q. That is all.

Cross-examination by Mr. RODEY:

Q. You say you are upwards of 90 years of age?

A. Yes.

Q. Do you know what year, according to the Spanish mode of reckoning, you were born?

A. Yes; I do not know in what year I was born.

Q. Do you know who was the earliest governor you can recollect of the pueblo of Laguna?

A. I do not remember who the governor was. I can not remember. I remember that it was an Indian.

Q. Do you remember a casique of that pueblo named Juan Miguel?

A. No.

Q. Do you remember an alcalde that was elected ward of the pueblos of Acoma, Laguna, and Cebolleta by the name of Jose Miguel Aragon?

A. Yes.

Q. How old were you or how large a boy were you at the time you knew him?

A. I was already a boy.

Q. Do you remember the time that Governor Narbona was here in New Mexico?

A. Yes.

Q. Did you ever hear of a man by the name of Baltazar Baca as having lived in the vicinity of where you were brought up?

A. No; I did not know about him.

Q. Did you ever hear of him?

A. No.

Q. Did you ever hear of Jose Baca?

A. No.

Q. You were a few years older than Marcos Baca, were you?

A. Yes; I am a little older than he.

Q. Did you know his father?

A. Marcos is a little older than I am.

Q. How much older was Marcos Baca than you?

A. I do not know.

Q. Well, when you were small boys, as far back as you can recollect, how much bigger than you was he?

A. When I was a boy he was already a big man.

59 Q. Then he was considerably older than you, was he?

A. Yes.

Q. Did you know Marcos' father?

A. No.

Q. Do you know whether he was living or dead when you and Marcos were small boys?

A. When I was little he was already dead, because I did not hear anything about Marcos' father.

Q. Can you speak Spanish?

A. No.

Q. What language did Marcos Baca speak?

A. We talked the best we could.

Q. Where did you say Marcos lived?

A. When I knew him first he lived at El Rito.

Q. Where did he live next?

A. In Cubero.

Q. And after that?

A. When he lived at Cubero he bought land at Encinal, and he went to live there.

Q. Did he live there before the Americans came to this territory?

A. Yes; then, some Americans were here already.

Q. What did you do with the land you bought there?

A. I sold.

Mr. POPE. Q. Who did you sell to?

A. I sold to a Mexican by the name of Juan Jose Pino.

Q. That is all.

That is our case, may it please the court.

The COURT. Anything in rebuttal, Mr. Rodey?

Mr. RODEY. The petitioner will have nothing in rebuttal, sir.

August 31st, 1896, ten o'clock a. m., the further hearing of said cause was taken up and the following proceedings were had therein in open court:

MURRAY, A. J. We find on examination of the records that there is a conflict between the land covered by this grant and the lands which seem to have been conceded or patented to the Pueblo Indians and perhaps other individuals. They are in no way parties to the record. The United States has filed no answer. The order will be that the plaintiff make these conflicting parties parties to the suit, and that notice be served upon all of them as required by the statute. The United States, if it wishes to be heard, should file an answer, so that an issue will be made that will bind the parties. We wish to say that the court indulges the hope that no other case will be presented in this condition. An
60 order will be entered making the conflicting grant holders parties to the proceeding unless they waive their rights or authorize somebody to represent them. The case will not be further heard until these parties are served and made parties to the record. This simply raises the question as to the validity of the grant claimants.

Mr. POPE. I ask leave of the court to file an answer, so that our pleadings may conform with the proofs, and file it as of the date of the hearing.

The COURT. Very well.

I hereby certify that the above and foregoing 34 pages contain a full, true, and correct transcript of all the shorthand notes I took on the trial of the above-entitled case.

W. J. McPHERSON,
Official Stenographer.

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PLAINTIFF'S EXHIBIT 5.

On this 14th day of October, 1878, before me, Walter G. Marmon, a notary public in and for the county of Valencia, Territory of New Mexico, personally appeared Ramon Sanches, of lawful age, and who, having been by me first duly sworn, deposeth and saith in answer to the following interrogatories:

Question. State your name, age, and place of residence?

Answer. My name is Ramon Sanches; my age is sixty-three years, and I reside at Cubero, in Valencia County, Territory of New Mexico.

Ques. Are you acquainted with the Baltazar Baca and sons land grant; and if so, how long have you known it?

Ans. I am; I have known it for fifty years.

Ques. Do you know the location of the _____ which forms the north boundary call of said grant? If so, where is it located?

Ans. I know the location of the _____; it is situated

Ques. Do you know the location of the White Bluffs which forms the south boundary of said grant? If so, where is it located?

Ans. I know its location; it is situated at the lower end of the Encinal Valley, near the mesa, at whose foot runs the Zuñi road, as I have pointed out.

Ques. Do you know the location of the table land which forms the east boundary call of said grant? If so, where is it located?

Ans. I do; it is situated east of Encinal, between that place and Pajuate, as I have pointed out.

Ques. Do you know the location of the sharp-pointed black hill which forms the west boundary call of said grant; and if so, where is it situated?

Ans. I do; it is north of Cubero and west of Encinal, as I have pointed out.

Ques. How do you know the location of these natural objects?

Ans. From a personal knowledge and general reputation since I can remember.

Ques. Have you any interest in said grant; and if so, what interest have you?

Ans. I have none.

RAMON SANCHEZ,
Deponent.

Subscribed in my presence and sworn to before me this 14 day of October, 1878.

[SEAL]

WALTER C. MARMON,
Notary Public.

PLAINTIFF'S EXHIBIT 6.

On this 14th day of October, 1878, before me, Walter G. Marmon, a notary public in and for the county of Valencia, Territory of New Mexico, personally appeared Jose Justo Saavedra, of lawful age, and who, having been by me first duly sworn, deposeth and saith in answer to the following interrogatories:

Question. State your name, age, and place of residence?

Answer. My name is Jose Justo Saavedra; my age is fifty-three years, and I reside at Cubero, in Valencia County, Territory of New Mexico.

Ques. Are you acquainted with the Baltazar Baca and son's grant; and if so, how long have you known it?

Ans. I am; I have known it forty-five years.

Ques. Do you know the location of the _____, which forms the north boundary call of said grant? If so, where is it located?

Ans. I know the location of the _____; it is situated

Ques. Do you know the location of White Bluffs which forms the south boundary call of said grant? If so, where is it located?

Ans. I know its location; it is situated near the old Zuñi road, at the lower end of the Encinal Valley.

Ques. Where is the table land which form the east boundary call of said grant located?

Ans. It is a mesa running north and south between Pajuate and Encinal.

Ques. Do you know the location of the sharp-pointed black hill which forms the west boundary call of said grant; and if so, where is it situated?

Ans. I do; it is in front of Encinal, between there and Cubero.

Ques. How do you know the location of these natural objects?

Ans. From a personal knowledge and general reputation since I can remember.

Ques. Have you any interest in said grant; and if so, what interest have you?

Ans. I have none.

his
JOSE JUSTO X SAAVEDRA.
mark.

Witness: JOHN MENAUL.

Subscribed in my presence and sworn to before me this 14 day of October, 1878.

[SEAL.]

WALTER G. MARMON,
Notary Public.

PLAINTIFF'S EXHIBIT 7.

On this 14th day of October, 1878, before me, Walter G. Marmon, a notary public in and for the county of Valencia, Territory of New Mexico, personally appeared Margarito Baca, of lawful age, and who, having been by me first duly sworn, deposeth and saith in answer to the following interrogatories:

Question. State your name, age, and place of residence?

Answer. My name is Margarito Baca; my age is thirty-eight years, and I reside at Cubero, in Valencia County, Territory of New Mexico.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

Ques. Are you acquainted with the Baltazar Baca and Sons grant; and if so, how long have you known it?

Ans. I am; I have known it since I can remember.

Ques. Do you know the location of the which forms the north boundary call of said grant. If so, where is it located?

Ans. I know the location of the . It is situated

Ques. Do you know the location of the white bluffs which forms the south boundary call of said grant? If so, where is it located?

Ans. I know its location; it is situated near the old trail to Zuñi, south of Encinal.

Ques. Where is the table-land which forms the east boundary call of said grant located?

Ans. It is situated east of Encinal, and between there and Pajuate.

Ques. Do you know the location of the sharp-pointed black hill which forms the west boundary call of said grant; and if so, where is it situated?

Ans. I do. It is the hill north of Cubero, and opposite or west of Encinal.

Ques. How do you know the location of these natural objects?

Ans. From a personal knowledge and general reputation since I can remember.

Ques. Have you any interest in said grant; and if so, what interest have you?

Ans. I have; as an heir.

MARGARITO BACA.

Subscribed in my presence, and sworn to before me this 14 day of October, 1878.

[SEAL.]

WALTER G. MARMON,
Notary Public.

(Here follows map marked p. 64.)

65 DEFENDANT'S EXHIBIT A.—*Papers in reported No. 30, from surveyor-general's office.*

To the Hon. WILLIAM PELHAM,
Surveyor-General of the Territory of New Mexico:

The petition of certain Pueblo Indians, occupying, constituting, and known as the Pueblo of Laguna in said Territory, respectfully represents to you that the said Pueblo of Laguna is the claimant and legal owner of certain tracts and parcels of land lying in the vicinity of their said original Pueblo grant, and in the county of Valencia, in the Territory of New Mexico, aforesaid.

Your petitioner, the Pueblo aforesaid, proceeds to describe the said several parcels as follows:

1st. The rancho called Pajuate, situated to the north and adjoining the site of the Cebolleta, distant three leagues from the said Pueblo of Laguna. This rancho became the property of your petitioner by purchase from Pascual Pajarito, Vicente Pajarito, Antonio Pajuate, and Miguel Moquino, who were the original grantees of the same. And for the validity of the original grant of the same, and of the purchase thereof by your petitioner, reference is hereby made to the document

marked A, on file, executed by Don Manuel Aragon, chief justice and war chief of the Pueblos of Ácoma, Laguna, &c., in the year 1813, and approved by Narbona, civil and military governor of the Territory of New México, on the 28th day of August, 1826.

2. The rancho called El Rito, lying to the east of the Pueblo. Your petitioner, the Pueblo aforesaid, claims to be the owner of this
66 rancho by virtue of the original grant to them, and as included within the same, which original grant is now on file in your office, for separate proceedings thereupon. But your petitioner also claims the said rancho by virtue of the recognition of its title thereto contained in the said document marked "A," above referred to, and also by virtue of the purchase of the pretended right and title of the heirs of the original grantee, for the evidence of which purchase your petitioner refers to the deed or document on file marked "C;" and for information as to the pretended title so purchased to the document marked C. Your petitioner claims confirmation of its title to this rancho as well by virtue of the documents here referred to as by virtue of its inclusion within their said original grant.

3. A certain tract of land known as the Gigante Cañon, lying eastwardly from this said pueblo, to the Ojo del Chamiso; and for the title of your petitioner thereto reference is made to the said document marked "A," above referred to, whereby the same is fully recognized and confirmed.

4. The rancho commonly called San Juan, lying eastwardly from said pueblo; and for title thereto your petitioner also makes reference to said Document A.

5. The site known as Cubero, lying westward from said pueblo, with the accquia and privileges appertaining thereto, to which their title also will appear upon reference to the said document marked "A."

6. The rancho called Santa Ana, lying westwardly from the said pueblo, one mile, more or less; and for their title thereto the petitioner
67 refers to the said Document "A," whereby the same is recognized and confirmed.

And for a further recognition of the right and title of your petitioner to the said several parcels of land reference is further made to the document marked "B No. 2," whereby the metes and bounds are more specifically set forth and defined, and which document was approved by the said Narbona, civil and military governor as aforesaid, on the 26th of August, 1826.

Your petitioner states that these documents here referred to contain the best written evidence of their right and title to the above-mentioned property which is in existence, so far as your petitioner knows and believes; that your petitioner is not able to produce the original documents referred to by the said documents so filed, because the same are so lost or destroyed that your petitioner is unable to procure and present the same.

But your petitioner is prepared and now offers to prove its continued possession and enjoyment of the said several tracts of land by virtue of its right and title thereto hereby advanced.

Your petitioner, the pueblo of Laguna aforesaid, prays confirmation of its said claim and title to the said several tracts or parcels of land.

(Signed)

J. S. WATTS,
Att'y for Petitioner.

(Endorsement:) 1. Notice. Laguna claim. File 68. Petition. 204, 205, 206. No. 1. 1. 5. Ter. of New Mexico, office of sur. gen'l. This document is duly recorded in vol. 2, on pages 204, 205, and 206 of Land Claim Records in this office.

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C.

In the jurisdiction of Laguna, on the 23d day of the month of August, 1843, before me, Citizen Juan Garcia, justice of the peace of said jurisdiction, appeared before me, in their proper persons, Citizens Don José Francisco Chaves y Baca, resident of the jurisdiction of Belen, and Juan Ygnacio Chaves, governor of the pueblo of Laguna, and Luis Sarracino, a native of said pueblo, whom I certify are known to me, and the first party stated that as agent of his father-in-law, Don José Antonio Pino, resident of Sabinal, and for himself, he sold, and in effect did sell, to the parties of the second part, as representatives of the pueblo of Laguna, all the arable lands he owns in the rancho of El Rito, as well as those of the same kind owned by Don José Antonio Pino, also their interest as legal heirs in said rancho, for the value and sum of seventy-five sheep, one hundred skins of the standard quality of all classes, and six horned cattle, as follows: Two oxen, one cow, two bulls, and one heifer, all of which the said representatives promise to deliver to Chaves y Baca as soon as possible to his satisfaction, at which the vendor expressed himself, and does express himself, as satisfied and paid; and if said lands are or should be worth more, he donates and cedes the remainder to the aforesaid pueblo to hold them for themselves, their children, heirs, and successors, in the free enjoyment of said arable lands, and if suit or litigation shall be commenced against them for said rancho, by themselves, their children, heirs,

or successors nor those of his father-in-law, as they now and
69 forever renounce all their right and title to said lands in favor of the purchasers, requesting the national justices to whom they may present themselves not to hear them, either in court nor out of court; and he further stated that he conveyed said arable lands and interests free from all tax, tribute, or other encumbrance, being the lawful possessors of the same as the legal heirs of Don Mateo José de el Pino and without injury to the remaining heirs to said rancho, with the only condition that the crops for the present year shall belong to the vendor, the arable lands and interests being from this time the lawful property of the purchasers, for which object he relinquished his rights, as well as those of his client, in favor of the said pueblo of Laguna, as also his residence and vicinity, the vendor retaining no further interest in the rancho del Rito, excepting the houses where they reside, situated thereupon; and for the fulfillment of this instrument the vendor pledged his personal property, now held or in future acquired, with power and authority to the national justices to compel and require the fulfillment thereof in a summary manner by judgment rendered by competent authority in a case duly tried, confessed, and not appealed; and on the present common paper, there being none of the proper stamp in this jurisdiction, the parties interested binding themselves to attach it thereto whenever they procure it, and in order that it may have the force and validity required by law, the said purchaser requested me to interpose my authority and judicial decree, and I, the

70 aforesaid justice, stated that I would and did interpose with my attending witnesses, with whom I act by appointment, in the absence of a notary public. To all of which I certify on said day, month, and year.

[Signed] JUAN GARCIA.

Attending:

[Signed] FLORENTINO CASTILLO.

Attending:

[Signed] JESUS MARIA BEITIA.

SURVEYOR-GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
Santa Fe, New Mexico, June 29, 1859.

The above is a translation of the original on file in this office.

[Signed] DAVID V. WHITING,
Translator.

(Endorsements:) 3. C. 220-221-22. 2. File 68. Translation of document C. 220-221-222. 4. C. 2. Ter. of New Mexico, Office of Sur. Gen'l. This document is duly recorded on pages 220, 221, 222, vol. 2, of Land Claim Records in this office.

B. No. 2.

In this year, one thousand eight hundred and twenty, Don Ignacio Sanchez Vergara, protector-general of the Indians of this province of New Mexico, executed a deed in accordance with the instrument authorized by Don Antonio Sedillo since the year seventeen hundred and sixty-nine, and the said protector having failed to specify three of the boundaries in said deed, the persons mentioned in the deed requested me to make a copy of it and specify the boundaries called for at the rancho of Paguasti, which deed is in tenor following:

71 In this pueblo of Jemez, on the first of June, in the year one thousand eight hundred and twenty, a document was presented to me by Lorenzo and Alonzo, Santiago, Alonzo 2d, Toribio and Rita, natives of said pueblo, executed by the former justice of the pueblo of Laguna, requesting me to take charge of the interest they represented in the rancho called Paguasti, and having recorded it, I find that Don Antonio Sedillo, justice at that time, presiding in the suit between Juan Paguasti and Pascual Pajarito, decided that each one should remain quiet on his own land without injuring the other.

In view of which and as protector of the Indians by the royal audience of Guadalajara, to whom private representations by the Indians in common and in particular are to be made when they are in any manner aggrieved, or if they are in want of lands of those the law allows them, or that they may have lawfully acquired and by virtue of the ancient possession to which the said Indians refer, to the lands known as the rancho of Paguasti acquired by a legal title, and the new settlement of Cebolleta having been granted to the citizens by Governor Don Fernando Chacon, and possession given by the Justice José Manuel Aragon with the formalities required by the laws requiring possession and settlement, and

having assigned their boundaries, the aforementioned rancho was left free, with its boundaries in the direction of Cebolleta to the table-land of El Gavilan, on the south to the Cuesta, on the west to the Rito de San José, and on the east to the little cañon of Cojo, the new Cebolleta colonists being satisfied with their boundary being the table-land of Gavilan adjoining the settlers in good faith.

It is to be considered that these Indians are in want of land and that the priest of Paguati is the only one who aids them in their necessities, having very small crops, and although in the beginning they occupied more land extending as far as the Rito, but Don Juan Pino having reduced them to worthless lands on all sides by depriving them of the aforesaid site, being the legal representative under a grant to his deceased father, but abandoned for more than thirty years, in which right he is sustained, the Indians became so restricted that they only have the aid of the priest of Pahuati, where the principal owners cultivate in common with the pueblo, and where assistance is given to those who have no land to cultivate for their support.

All the above which has been maturely deliberated upon and considered should be manifested whenever an attempt is made to deprive them of their ancient possession of the aforesaid Pahuati, and presenting themselves in person to the proper authorities or through their protector with the document to which reference is made, executed by the Justice Don Antonio Sedillo, there is no doubt that being satisfied of the justice of their claim they will be allowed to remain quiet in the enjoyment of what is so justly and lawfully theirs without dispute, by virtue of all of which and in the discharge of my duties so often enjoined by the royal decrees of the recopilation of the Indies, I execute this document for their protection, as protector of the Indians so strictly recommended to me by the attorney protector-general of the Indians, and

In testimony thereof, I signed it for record on said day, month, and year.

I have signed this copy as a witness that the protector has so stated.
[Signed] EUSEBIO ARAGON.

SANTA FE, August 28, 1826.

This document is approved so far as this Government is concerned, and is declared legal and formal in its contents.

[Signed] NARBOXA.

SURVEYOR-GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
Santa Fe, New Mexico, June 29, 1859.

The above is a translation of the original on file in this office.

DAVID V. WHITING,
Translator.

(Endorsements:) 3. Translation. 215, 216, 217. Document B. 3. 3. Ter. of New Mexico, office of Sur. General. This document is duly recorded on pages 215, 216, and 217, vol. 2, of Land Claim Records in this office. File 68, No. 2. Translation of Document B.

Don José Manuel Aragon, chief justice and war captain of these pueblos of Acoma, Laguna, settlement of Cebolleta and its districts.

In view of the resignation I have tendered of the office I have held on this frontier for the period of over twenty years, José Alairigua, governor of this pueblo of San José de la Laguna and the chiefs thereof, together with their interpreter, Antonio Herrera, appeared before me asking me to leave them a statement of the government and orders given by the honorable governors of this province, urgently requesting me to see if by this means they could be relieved from the disorders and grievances the pueblo formerly suffered in the changes of justices and ministers and providing against a recurrence of the same thing in the future, and in compliance with this just demand I have executed on this paper this declaratory statement, saying as I do say, that being present at the general visits made to this pueblo by Governors Don Fernando Chacon, Don Joaquin del Real Alencaster, Don Alberto Maynez, and Don José Manriques, authorizing these Indians to extend their fields beyond the league granted to them by the King, as far as they could plant for the actual support and maintenance of their families, the pueblo being situate in such a locality as not to afford them a sufficient quantity of arable land within the league allowed them by the King, and this pueblo having formerly suffered this scarcity of land for cultivation when this province

75 was governed by Don Thomas Velez Cachupin, these Indians purchased the rancho called Pagnate situated to the north and adjoining the site of Cebolleta, distant three leagues from this pueblo. This rancho was formerly granted to Pascual Pajarito and Vicente Pajarito, Antonio Pagnate and Miguel Moquino, and having possessed it for thirty years they sold it to the pueblo, and certain citizens having petitioned and asked for permission to settle there they have not been allowed to do so by the superior government, as it was a purchase made by the Indians who hold a deed authorized by the former justice of the peace of this pueblo, Don Antonio Sedillo. In regard to the land toward the east, they have been allowed to plant on the (rancho) known as El Rito, and therefore also the Gigante Cañon to the Ojo del Chamiso, together with the rancho commonly called San Juan for pasture lands for their animals, the frontier being so much exposed that they can not risk them in any other direction. On the west they have the site known as Cubero, where they have fields under cultivation and an acequia of their own, and the' irrigate with the same water that passes through this pueblo; and in the same westerly direction distant a mile from said pueblo is the rancho called Santa Ana, where they hold lands for cultivation in common. As far as the alcalde is concerned who is to reside in this pueblo, he is forbidden by superior orders from availing himself of the labor of the Indians for any purpose, except by paying them the just value of their labor, neither can he compel them to serve on escorts for private individuals unless required by the government to treat upon subjects 76 connected with the royal service. As far as the officiating minister is concerned, he is placed upon the same terms as the justice, without any authority to tax the pueblo or any Indian with their services, excepting a sexton to ring the bell, and the feed of a horse

which is to be furnished by the pueblo, in case it should be necessary for him to hear a confession. This is the method established by the governors for the good government of these pueblos, and having no private malice to accomplish, and at the request of the Indians of this pueblo of Laguna, I leave this statement, which I signed on the twenty-fifth day of March, one thousand eight hundred and thirteen.

(Signed)

MANUEL ARAGON.

SANTA FE, August 28th, 1826.

Approved so far as this government is concerned, and legal and formal in its contents.

(Signed)

NARBONA.

(Marginal notes:) This document is to remain in the hands of Don Juan Miguel, casique, and at his death in those of his two daughters, Catarina and Josefa, who have the same right and interest in the site together with Don Vicente included in the same interest. [Rubric.]

The site of Cubero mentioned in this document, and the water running through it, is the only water these Indians have the use of, as this proceeds from the Gallo spring; therefore, if the said spring is settled, these poor Indians would perish, as it is the same water that reaches to the pueblo, and these Indians are entitled to it, being old settlers in good faith for more than one hundred years. [Rubric.]

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SURVEYOR-GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
Santa Fe, New Mexico, June 29, 1859.

The above is a translation of the original on file in this office.

(Signed)

DAVID V. WHITING,
Translator.

(Endorsements:) 4. No. 1. File 68. Translation of Document A. 213, 214, 215. A 24 Ter. of New Mexico, Office of Sur. Gen'l. This document is duly recorded on pages 213, 214, and 215, Vol. 2, of Land Claim Records in this office.

No. 2.

In the year one thousand eight hundred and twenty, Don Ygnacio Sanchez Vergara, protector-general of the Indians of this province of New Mexico, executed a document alike to the instrument authorized by Don Antonio Sedillo in the year one thousand seven hundred and sixty-nine, and for not stating three boundaries which said protector did not mention in his document, the parties mentioned in said document requested me to make a copy thereof, stating the boundaries to which the Rancho of Paguasti is entitled, which document is of the tenor following:

In this Pueblo of Jemez on the first day of June, in the year one thousand eight hundred and twenty, a document authorized by the former alcalde of the pueblo of Laguna was presented to me by Lorenzo and Alonzo Santiago, Alonzo the second, Toribio

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and Rita, native Indians of said pueblo, requesting me to take charge of the interests they represented in the rancho called Paguasti, and, having registered it, I find that Don Antonio Sedillo, the said alcalde at that time, took cognizance of a suit brought by Juan Paguati and Pascual Pajarito, both residents of said pueblo, and it was ordered that each one should quietly remain upon his own property without disturbing each other.

Such being the case, and as protector of the Indians for the royal audience of Guadalajara, to whom alone it is proper for the Indians to refer matters of a common or private nature, if they are in any way aggrieved, or if they have not a sufficient amount of land with that the law allows them or that they may have legally acquired, and by virtue of the ancient possession of said land to which the said natives refer, called the Rancho of Paguasti, acquired by a legal title, and that the new settlement of Cebolleta, granted by Governor Don Fernando Chacon to certain citizens, and possession given by the alcalde Don José Manuel Aragon, with the formalities required by the law of possession and settlement, the boundaries having been marked out, the aforesaid rancho and its boundaries in the direction of Cebolleta remained free with its ancient appurtenances as far as the table-land of El Gavilan; on the south to La Cuesta; on the west to the Rito de San José, and on the east to the Cañoncito del Cojo. The new settlers of Cebolleta were satisfied with their boundary at the table-land of El Gavilan, adjoining the holders in good faith.

79 The want of land by these Indians is to be taken into consideration, and that the tract of Paguasti is the only one that, in a measure aids them with its scant produce in their misery, and although at the commencement they had more land, extending as far as El Rito, they were restricted by Don Joaquin Pino to a tract of waste land, he having deprived them of the said land by virtue of a right to it held by his late father, whom he represents, but which land has been abandoned for more than thirty years. Nevertheless his title was recognized, and they are so much reduced that the only aid that they receive is from Paguasti, where the principal owners cultivate the soil in common with the pueblo, and those who have no lands to cultivate for their support are, in a measure, relieved. All of which has been well premeditated and considered, and be shown whenever an effort is made to injure them by depriving them of the ancient possession of Paguasti. There is no doubt that, presenting themselves in person, or through their protector, to the superior audience, they will be allowed to remain in peace in the enjoyment of what is unquestionably theirs.

In testimony whereof, and in compliance with the duties so repeatedly enjoined upon me by the royal laws of the recopilation of the Indies, I executed this document for their protection, as protector of the Indians who are so highly recommended to me by the attorney-protector-general of the Indians, and for its due authenticity I signed on said day, month, and year.

80 I signed this as a witness to the truth of statement made by the protector.

(Signed)

EUSEBIO ARAGON.

SANTA FE, August 28th, 1826.

This document is approved so far as this government is concerned and according to the merit and formality in which it appears.

(Signed)

NARBONA.

SURVEYOR-GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
Santa Fe, New Mexico, June 29, 1859.

The above is a translation of the original on file in this office.

(Signed)

DAVID V. WHITING,
Translator.

(Endorsements:) 5. File 68. Translation. 218, 219, 220. 5. D.
5. 4. Ter. of New Mexico, Office of Sur. Gen'l. This document is duly recorded on pages 218, 219, and 220, vol. 2, of Land Claim Records, in this office. Doc. B. 7.

PUEBLO OF LAGUNA.

JOSÉ GONZALEZ sworn.

Q. Have you any interest in this case?

A. I have none.

Q. How old are you?

A. I believe I am forty years of age.

Q. Do you know the rancho called Pahuati, adjoining Cebolleta, and how long have you known it?

81 A. I have known it since 1833.

Q. Who have possessed it from that time up to the present?

A. I am satisfied that it has never been occupied by any others than the Indians of Pahuati, who are the same Indians residing at Laguna.

Q. Have the Indians held undisputed and undisturbed possession of it from the time you knew the land?

A. They right to it has never been disputed to my knowledge.

Q. Do you know the rancho called El Rito?

A. I have known it since 1842.

Q. Are the Laguna Indians in possession of that rancho, and for how long?

A. I know that they purchased in 1842 from the former settlers and that they have been in possession from that time to this. I was also informed by the old settlers of Cebolleta that the Rito belonged formerly to Laguna, but that the Pinos had usurped their rights and that the Indians had purchased what was actually their own before.

Q. Do you know the tract of the Gigante Cañon, and who has been in possession of it since you have known it?

A. I have known it since 1833, but I do not know who owns it. The land is used for pasture by the people of Laguna and Cebolleta.

Q. Do you know the rancho called San Juan and who is in possession of it?

A. I have known it since 1833. It has always been in the possession of the Laguna Indians.

Q. Do you know the rancho of Santa Ana?

82 A. I have known it since 1842. It is occupied in whole or in part by the Laguna Indians. I do not know which is the line

between the Acoma and Laguna Indians; both are upon the land. When I first knew the rancho the Laguna Indians alone held possession.

Q. Have you lived in the immediate vicinity of these lands since you have known them?

A. I have lived at Cebolleta for five years, and previous to my removing to Cebolleta I lived at Ranchos. I am a Mexican citizen by birth.

The above testimony was taken in the presence of Col. Jas. L. Collins, Supt. of Ind. Affs.

(Signed)

JOSÉ GONZALEZ.

Sworn and subscribed before me this 30th day of June, 1859.

Surreyor-General.

JOSÉ FRANCISCO ARAGON, sworn.

Q. Have you any interest in this case?

A. I have none. I reside at Cebolleta.

Q. How old are you?

A. 49 years old.

Q. Do you know the rancho of Pahuate and who has had possession of it?

A. I have known it since 1820; the pueblo of Laguna has held undisputed possession up to this time.

Q. Do you know the rancho of El Rito and who has occupied it?

83 A. I have known it since 1820. It was first owned by the Riteños and afterwards purchased by the Laguna Indians, who have held undisputed possession from that time to this. I don't know its boundaries.

Q. Do you know the Gigante Cañon?

A. I do; it is used by the entire neighborhood for pasture ground.

Q. Do you know the rancho of San Juan?

A. I have known it since 1820. It has been held by the Laguna Indians since that time. I do not know its boundaries.

Q. Do you know the rancho of Santa Ana?

A. I have known it for the same period of time. It has always been occupied by the Laguna Indians.

(Signed)

JOSÉ FRANCISCO ARAGON.

Sworn and subscribed before me this 30th June, 1859.

Surreyor-General.

Rev. SAMUEL GORMAN, sworn.

Q. Do you know the rancho of Pahuate? If so, state its limits to the best of your knowledge.

A. I do. On the north a little mountain called the Gavilan; on the east the Cojo Cañon; on the south the cold spring—the boundary of the pueblo; on the west the Rito of San José.

Q. What are the boundaries of El Rito?

A. I do not know.

(Signed)

SAM'L GORMAN.

Sworn and subscribed before me this 30th day of June, 1859.

Surreyor-General.

84 (Endorsements:) 6. File 68. Testimony concerning Pueblo Laguna. 6. June 30, 1859. 6. Terr. of New Mexico, office of sur. gen'l. This document is duly recorded on pages 222, 223, and 224, in vol. 2 of land claim records in this office. 9. 222, 223, 224.

THE PUEBLO OF LAGUNA)

vs.

THE UNITED STATES.)

This case was set for trial on the 30th day of June, 1859.

The Indians of the pueblo of Laguna claim title to certain tracts of land in the vicinity and adjoining the league granted to them by order of the King of Spain in 1689. One of these tracts was acquired by grant and purchase, and for the others they claim a possessory title.

Document A filed by the claimants is a statement made, at the request of the Indians of Laguna, by José Manuel Aragon, chief justice and war captain of the pueblos of Acoma, Laguna, Cebolleta and its districts, upon his resignation of the above office, which he had held for twenty years, to the effect that he was present during the several visits made by the governors of the province to said pueblo, and that in consequence of the scarcity of lands within their league they were allowed to extend their fields as far as they could plant for their maintenance. The land which they were allowed to cultivate, as above mentioned, is known as the rancho of Paguaste, and purchased by them subsequently from José Francisco Chaves y Baca, his own share and that of his

85 father-in-law, José Antonio Pino, as will appear by Document C. He also states that the Indians occupied the tract known as El Rito and also the rancho known as San Juan for pasture lands. On the west they also had the rancho of Cubero, which they used in common with the residents of that town, and a mile distant from the pueblo in a westwardly direction, they also occupied a rancho known as Santa Ana. This document bears date the 25th of March, 1813. On the 28th August, 1826, it was approved and made legal and formal by Governor Narbona, as will appear by his certificate attached to Document A.

Document B purports to be a statement by Eusebio Aragon to the effect that he was a witness to the establishment of certain boundaries of the Paguaste Rancho by Ignacio Sanchez Vergara, protector of the Indians, in 1820, which boundaries had been omitted in the deed made in 1769. Also that the Indians had been deprived of the best lands within that tract by Don Juan Pino, as the legal representative of his grandfather, to whom the land had been granted but which had been abandoned for over thirty years.

This document also bears the confirmation of Governor Narbona, and declared legal and formal, and bears the same date as the confirmation of Document A.

Document C is the conveyance of the interest of Juan Pino in the Paguasti Rancho to the Indians, as above stated.

Evidence has been produced by the claimants to prove their quiet and undisturbed possession of the land from the year 1820 up to the present time.

86 The papers acted upon by this office are the originals filed by the claimants.

In the absence of any conflicting grant or claims to the land claimed by the Indians, the approval of Governor Narbona to the statements made in documents A and B and their legalization by him, is deemed to be equivalent to a grant made to said Indians; and although it is not in exact accordance with the usages and customs of the time, it is believed that the Indians have a good and equitable claim to the land, which is sustained by the fact of their having been in the uninterrupted possession of it for the period of forty years, as well as the fact of the boundary of Cebolleta, the site of which was granted in 1800, being the same as the one claimed by the Indians, showing conclusively that their claim was recognized as good by the Government at that time.

The tracts known as the Rancho of Paguasti, Rancho of El Rito, the tract known as the Gigante Cañon, and the ranchos of San Juan and Santa Ana, are deemed to be severed from the public domain, and are therefore approved to the Indian pueblo of Laguna and ordered to be transmitted to Congress for its action in the premises.

Surveyor-general's office, Santa Fe, New Mexico, July 10th, 1859.

(Signed)

WM. PELHAM,
Surveyor-General.

(Endorsements:) 7. File 68. Decision concerning pueblo Laguna. July 10 59. 225, 226, 227. 7. 7. 7. This document is duly recorded in vol. 2, on pages 225, 226, and 227 of the Land Claim Records in surveyor-genl.'s office.

87

Testimony of Ramon Sanchez.

Question by D. SAWYER:

What is your name?

Answer. Ramon Sanchez.

Q. Where do you reside?

A. At Cubero.

Q. What is your age and how long have you resided at Cubero?

A. I am 62 years old. Have lived at Cubero for 45 years.

Q. Are you acquainted with the boundary calls of the Laguna purchases?

A. I am.

Q. Name the boundary calls of the Paguaste purchase.

A. On the north the Mesa Gabilan; on the south the Cuesta; on the east the Cañoncito de Cojo, and on the west the Rito de San José.

Q. Do you know the boundary calls of the El Rito purchase?

A. I do not.

Q. What is the east boundary of the Gigante purchase?

A. The Mesa de Gigante.

Q. Do you know the boundary calls of the Rancho of El Rito?

A. I do not know of any purchase by the Lagunas of the Rancho of El Rito, but know the boundary calls of a tract of land which they call by that name.

Q. Name the boundary calls of that tract.

A. On the east the little red mesa and the Mesita de Piedra de Amolar; on the south the Rancho Viajo.

Q. What forms the west boundary of the Rancho of Santa Ana?

A. The old dam.

Q. What is the south boundary?

88 A. The foot of the mesa of the Garvisos.

Q. What is the north boundary?

A. The mother Acequia of the Lagunas.

Q. What is the east boundary?

A. The little town of the Garvisos.

Q. Do you know the Rancho of San Juan?

A. I do not.

Q. Are the above-named points the ones you have pointed out to me
as such?

A. They are.

Q. Have you any interest in any of the lands of the Lagunas?

A. I have not.

(Signed)

RAMON SANCHEZ.

Sworn to and subscribed before me this thirteenth day of March, 1877.
The above was read over, explained, and the interlineations made before
signing.

[SEAL.]

(Signed) WALTER S. MARMON,
Notary Public.

Testimony of George H. Pradt.

Question by D. SAWYER:

Where do you reside?

A. At Laguna.

Q. How old are you and how long have you resided at Laguna?

A. I am 32 years old, and have resided at Laguna for about five
months.

Q. Are you acquainted with the boundary calls of the Laguna pur-
chases?

A. I know almost all of them.

89 Q. How long have you known the Laguna lands and how did
you become acquainted with the points which form the boundary
calls?

A. I have known the lands for four years and became acquainted with
them by running township and section lines over the country, and from
general information from people residing in the country.

Q. Do you know the Poganti purchase and what are the boundary
calls of it?

A. I do. On the north a line through the Mesa Gabilan; on the east
the Cañon Cojo; on the south a line through the Cuesta, and on the west
the Rito de San José.

Q. What are the boundary calls of the Rancho of El Rito?

A. On the east mesa de Piedra de Amolar and the Mesita Colorado;
on the south the rancho Viejo. The rest I do not know.

Q. Do you know what forms the east boundary of the Gigante pur-
chase?

A. I do. It is the foot of the Mesa Gigante, to the south boundary of
the Poguate purchase.

Q. What are the calls of the Rancho of Santa Ana?

A. On the west an old dam between the point of the mesa and Cubero Mountain; on the south the foot of the mesa bounding the valley of the San José River on the south; on the east the lands of the Laguna grant, and on the north the old Acequia.

Q. Do you know what forms the boundaries of the San Juan purchase?

90 A. I do not, except that it is enclosed within the other lands of the Lagunas.

Q. Have you any interest in any of the lands of the Lagunas?

A. I have not.

Q. Are the above-named points the ones you have pointed out to me as such?

A. They are.

(Signed)

GEORGE H. PRADT.

Sworn to and subscribed before me this 13 day of March, 1877.

[SEAL.]

(Signed) WALTER G. MARMOX,

Notary Public.

Testimony of Antonio Saricino.

Question by DAN SAWYER:

How old are you?

A. At least fifty years old.

Q. Where do you reside?

A. At Laguna.

Q. Do you know what forms the boundary calls of the Laguna purchases?

A. I do.

Q. What are the boundaries of Pogueate?

A. On the north the Mesa Gabilan; on the east the Cañon Cojo; on the south the Cuesta, and on the west the Rito de San José.

Q. What forms the boundaries of the Rancho of El Rito?

A. On the east the Mesa de Piedra de Amolar; on the south the Rancho Viejo; on the west the Red Ranch at the foot of the Red Mesa.

91 Q. What is the east boundary of Gigante?

A. The foot of the Mesa Gigante?

Q. What are the boundaries of the Rancho of Santa Ana?

A. The west boundary is the old dam at the foot of the mesa; on the south the Mesa Garvisos; on the east the lands of the Laguna Pueblo, and on the north the old Acequia.

Q. Have you any interest in the Laguna lands?

A. I have.

Q. Are the above-named points the ones you pointed out to me as such?

A. They are.

his
ANTONIO X SARICINO,
mark

Attest:

J. M. IRWIN.

Sworn to and subscribed before me this 13 day of March, 1877, and I do certify that the contents of the above were fully made known and explained before signing.

[SEAL.]

(Signed) WALTER G. MARMON,
Notary Public.

Testimony of Alexander Padilla.

Question by DAN SAWYER:

Where do you live?

A. In Isleta, Bernalillo County, N. M.

Q. How old are you and how long have you resided at Isleta?

A. I am 72 years old and have lived at Isleta many years.

Q. Are you acquainted with any of the boundary calls of the Laguna purchases?

A. I have known some of them ever since I was a boy.

Q. What boundaries of the Rancho of El Rito do you know?

A. The Mesa Colorado on the east and the Rancho Viejo on the south.

92 Q. Have you any interest in the Laguna lands?

A. I have not.

Q. Are the points above named the ones you have pointed out to me as such?

A. They are.

(Signed)

ALEJANDRO PADILLA.

Sworn to and subscribed before me this 13th day of March, 1877.

(Signed) WALTER G. MARMON,
Notary Public.

[SEAL.]

Testimony of Santiago Pacheco.

Question by DAN SAWYER:

Where do you live?

A. At Laguna.

Q. How old are you and how long have you lived at Laguna?

A. About forty-five years old, and have always lived at Laguna.

Q. Do you know the boundaries of the Laguna purchases?

A. I do.

Q. What forms the west boundary of the Rancho of San Juan?

A. The Black Mesa.

Q. What is the south boundary?

A. The San Juan Mesa.

Q. What is the west boundary of El Rito?

A. The Rancho Colorado and Mesa Blanco.

Q. What is the west boundary of Gigante?

A. The Rancho of San Juan.

Q. What are the boundaries of the Rancho of Santa Ana?

93 A. On the north the old Acequia of the Lagunas; on the east the Laguna Pueblo; on the south the Mesa Garvisos, and on the west the old dam.

Q. What are the boundaries of Pogueate?

A. On the north the Mesa Gabilan; on the east the Cañon Cojo; on the south the Cuesta, and on the west the Rito de San José.

Q. Are the above-named points the ones you have pointed out to me as such?

A. They are.

his
SANTIAGO X PACHECO,
mark

Attest:

J. M. IRWIN.

Sworn to and subscribed before me this 14 day of March, 1877, and I certify that the contents of the above were made known and explained before signing.

(Signed) WALTER G. MARMON,
Notary Public.

[SEAL.]

Testimony of Juan Analla.

Question by DAN SAWYER:

Where do you live?

A. At Laguna.

Q. How old are you and how long have you lived at Laguna?

A. I am 30 years old, and have always lived at Laguna.

Q. Do you know the boundary calls of the Laguna purchases?

A. I do.

Q. What are the boundaries of Poguate?

A. On the north the Mesa Gabilan; on the east the Cañon Cojo; on the south the Cuesta, and on the west Rito de San José.

Q. What are the boundaries of El Rito?

A. On the north the Rancho of San Juan and Gigante; on the east the Mesita Colorado and Mesita de Piedra de Amolar; on the south the
94 Rancho Viejo, and on the west the Rancho Colorado and Mesa Blanco.

Q. What are the boundaries of Gigante?

A. On the north, the south boundary of Poguate; on the east, the Mesa Gigante; on the south, the rancho of El Rito, and on the west, the rancho of San Juan.

Q. What are the north and west boundaries of the rancho of San Juan?

A. On the north, the Poguate lands, and on the west, the Black Mesa.

Q. What are the boundaries of the rancho of Santa Ana?

A. On the north, the old Acequia; on the east, the Laguna Pueblo; on the south, the Mesa Garvisos, and the west, the old dam.

Q. Are the above-named points the ones you have pointed out to me as such?

A. They are.

his
JUAN X ANALLA,
mark

Attest:

J. M. IRWIN.

Sworn to and subscribed before me this 14 day of March, 1877, and I certify that the contents of the above were fully made known and explained before signing.

[SEAL.]

(Signed) WALTER G. MARMON,
Notary Public.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

Testimony of Robt. G. Marmon.

Question by D. SAWYER:

Where do you live?

A. At Laguna.

Q. I am 23 years old and have lived at Laguna for five years.

Q. Do you know the boundary calls of the Laguna purchases?

A. I do.

95 Q. How did you become acquainted with them?

A. By surveying through the immediate vicinity, and from general knowledge obtained from residents of the country.

Q. What are the boundaries of Pognate?

A. On the north, the Mesa Gabilan; on the east, the Cañoncito Cojo; on the south, the Cuesta, and on the west, Rito de San José.

Q. What are the boundaries of the rancho of El Rito?

A. On the north, the ranchos of San Juan and Gigante; on the east, the Mesita Colorado and Mesita de Piedra de Amolar; on the south, the Rancho Viejo, and on the west, the Mesa Blanco and Rancho Colorado.

Q. What are the boundaries of Gigante?

A. On the north, the purchase of Pognate; on the east, the Mesa Gigante; on the south, the rancho of El Rito, and on the west, the rancho of San Juan.

Q. What are the boundaries of the rancho of San Juan?

A. On the north, Pognate; on the east, the Gigante purchase; on the south, the rancho of El Rito, and on the west, the Black Mesa.

Q. What are the boundaries of the rancho of Santa Ana?

A. On the north, the old Acequia of the Lagunas; on the east, the pueblo of Laguna; on the south, the Mesas Santa Ana and Garvisos, and on the west, the old dam.

Q. Have you any interest in any of the Laguna lands?

A. I have not.

Q. Are the above-named points the ones you have pointed out to me as such?

A. They are.

96

(Signed) ROB. G. MARMON.

Sworn to and subscribed before me this 14 day of March, 1877.

(Signed) WALTER G. MARMON,
Notary Public.

(Endorsement:) 9. Laguna grant survey. Testimony of Ramon Sanchez, Geo. H. Pradt, Anto. Saricino, A. Padilla, Santiago Pacheco, Juan Analla, and Robt. G. Marmon. No. 30. March 14, 1877.

(Here follows maps marked pp. 97, 98, 99.)

100 And be it further remembered that thereafter, to wit, on the 31st day of August, 1896, at the August term of said court, held at Santa Fe, in the Territory of New Mexico, the following order was made:

MARGARITO BACA ET AL. }
versus } No. 114.
 UNITED STATES. }

It appearing to the court that the Indians of Laguna and the owners of the Cebolleta grant, reported number 46, are claimants adverse to the plaintiffs in this cause by reason of the land herein in controversy being wholly or in part within the lands patented to the said Indians of Laguna and to said owners of the Cebolleta grant by act of Congress; and it further appearing to the court that said persons are necessary parties defendant to this cause, it is ordered by the court that the plaintiffs herein do amend their petition so as to make said persons parties defendant, and that said plaintiffs cause said persons to be cited and served as provided by law. It is further ordered that the further hearing of this cause stand adjourned and continued until this order of court shall have been complied with.

101 And be it further remembered that thereafter, to wit, on the 26th day of October, A. D. 1896, there was filed in the office of the clerk the appearance of the Pueblo of Laguna, which said appearance is in words and figures following, to wit:

In the United States Court of Private Land Claims sitting within and for the Territory of New Mexico. In the matter of the Encinal grant claim, No. 114.

MARGARITO BACA ET AL. }
vs. } No. 114. B. S. Rodey, Atty. for Plffs.
 UNITED STATES ET AL. }

The defendant herein, the Laguna Pueblo, herein represented by its attorney, E. B. Seward and James H. Seward, hereby waives notice and service of summons and copy of petition and amended petition in the above-entitled cause, and waives time of said service and announces itself ready for trial herein.

Dated Santa Fe, N. M., October 22, 1896.

EDWIN B. SEWARD and JAMES H. PURDY,
Solicitors for said Defendant the Laguna Pueblo.

102 And be it further remembered that on the 8th day of December, A. D. 1896, a summons was issued by the clerk of said court, which summons, with all endorsements thereon, is in the following words and figures, to wit:

103 FORM NO. 167.
U. S. Court of Private Land Claims.

Summons.

In the U. S. Court of Private Land Claims.

UNITED STATES OF AMERICA,
District of New Mexico, ss.

MARGARITO BACA ET AL., PLAINTIFF,	} Petition filed in the clerk's office, this 23d day of February, A. D. 1893.
<i>versus</i>	
THE UNITED STATES OF AMERICA ET AL.,	
defendant.	

The President of the United States of America to the United States of America, the pueblo of Laguna, Albert R. Shattuck, and Francisco Sarracino, Desiderio Sandoval, and Anastacio Garcia, the three commissioners of the Cebolleta land grant, greeting:

You, and each of you, are hereby notified that an action has been brought in said court, by Margarito Baca for himself and others as claimants of the Baltazar Baca or San Jose del Encinal land grant as plaintiff, against you as defendant, under the provisions of the act of the Congress of the United States, entitled "An act to establish a Court of Private Land Claims, and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action, in said court, within thirty days from the date of service of this summons upon you; and if you fail so to do, the said plaintiff will take default according to the provisions of the aforesaid act.

Witness, the honorable Joseph R. Reed, chief justice of the Court of Private Land Claims, and the seal of the said court, at the city of Santa Fe, in said district, this eight' day of December, A. D. 1896, and of the independence of the United States the one hundred and twentieth year.

JAMES H. REEDER, *Clerk,*
By IRENEO L. CHAVES, *Deputy Clerk.*

103 *Proof of service.*

UNITED STATES OF AMERICA,
District of New Mexico, ss.

I, Fred D. Marshall, of lawful age, being first duly sworn on my oath, do depose and say that the within writ came to my hand this 8th day of December, A. D. 1896, and that I did on said same day at the county of Bernalillo, in the Territory of New Mexico, serve the same upon Francisco Sarracino, both for himself and for Desiderio Sandoval and Anastacio Garcia, the said three persons being, as it is said and as acknowledged by said Sarracino, the three duly elected, appointed, and qualified commissioners of the Cebolleta land grant, and acting in such capacity, and the said Sarracino accepted said service as such commissioner for himself and his said cocommissioners; and I further certify that

I made said service by delivering a true copy of said writ to said Sarracino at said time and place, under the hand and seal of the clerk of said court, in person to said Sarracino, and by also delivering to him, the said Sarracino, at said time and place, a true and correct copy of the petition as hereto annexed and made a part of this return. This writ is therefore returned as the law direct.

FRED D. MARSHALL.

TERRITORY OF NEW MEXICO,
County of Bernalillo.

Subscribed and sworn to before me, at my office in said county, in manner and form aforesaid, this 8th day of December, A. D. 1896.

BERNARD S. RODEY,
Notary Public, Bernalillo Co., N. M.

TERRITORY OF NEW MEXICO,
County of Bernalillo.

I, the undersigned, do hereby certify that on this, 16th day of December, A. D. 1896, I served a true and certified copy of this summons and true copies of all the papers and muniments of title hereto annexed at Santa Fe, in the county of Santa Fe, in said Territory, upon Albert R. Shattuck, an owner or reputed owner in the Cebolleta land grant, with which the land described in the within petition is in conflict, by then and there showing this original and delivering three copies to A. E. Twitchell, esq., the attorney and solicitor of said Shattuck, and which said Twitchell accepted such papers, summons, and copies as such attorney of said Shattuck, and as and for him.

BERNARD S. RODEY,
Of lawful age and a citizen of the U. Sta.

The foregoing return and the matters and things in same set out subscribed and sworn to before me this Dec. 16/96, by said B. S. Rodey.

R. C. GORTNER,
Notary Public, Santa Fe, N. M.

(Indorsed:) "Baltazar Baca" or San Jose del Encinal land grant. Gen. No., . U. S. Court of Private Land Claims, district of New Mexico. Margarito Baca for himself and others, plaintiff, versus The United States and others, defendant. Return of service. Summons on commissioners of Cebolleta grant, and on A. R. Shattuck, who claims in same as owner. Filed this 16th day of December, A. D. 1896. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk. All owners or claimants of all conflicting interests are now duly cited. Pagate purchase of Laguna Indians. Cebolleta grant. B. S. R.

104 And be it further remembered that thereafter, to wit, on the eighth day of May, A. D. 1897, there was filed in the office of the clerk an opinion, which opinion is in words and figures following, to wit:

Opinion of the court.

MARGARITO BACA ET AL.
vs.
 UNITED STATES.

No. 114. San Jose del Encinal grant.

The petition is filed under the provision of the 8th section of the act of Congress approved March 3rd, 1891, which provides for the confirmation by this court of grants to land by Spain or Mexico which were complete and perfect at the date of the cession of this Territory to the United States. (22 Stats. at Large, 854 C., 539.)

From the petition it appears that in the year 1768, one Baltazar Baca and his two sons petitioned the governor of New Mexico for a tract of land known as the Encinal, situated in the present county of Valencia, in this Territory. It appears from the petition of Baca to the governor that he owned no land except at the place of his residence, and that he had acquired that through royal sale and not by grant; that he was badly provided for the maintenance of the small means which he had, of herds of live stock. He therefore prayed that a tract of land be given and ceded to him by grant, to enable him and his family, rather a large one, to keep their said herds on. In the month of December, 1768, the petition was presented to Governor Mendinueta, who granted the prayer of the petitioner. In the granting decree the governor said, "And in view of the reasons he sets forth therein and for the greater increase of live stock of all kinds, so necessary for the subsistence of this province, and bearing in mind that the will of his majesty is that his subjects enjoy all the convenience possible and increase their possessions; in consideration of all this" he concedes by grant to the petitioner and his two sons the tract of public domain which he applies for. The grant is to the father and sons in equal shares, for them and their successors for the pasturage of their herds of stock, and not in any case for planting. They were not

to abandon their place of residence. On the 19th day of January, 1769, in compliance with the decree of the governor, the petitioners were put in juridical possession of the land granted and the boundaries established by Antonio Sedillo, chief alcalde of the pueblo of San Jose de la Laguna. Before putting the petitioners in possession the alcalde stated that he consulted with principal Indians of the pueblo and neighboring settlers of the pueblo of Acoma and Navajo Apaches, and gave them to understand the object of his going there, which was the placing in possession of Capt. Baltazar Baca and his two sons. That after the matter was fully explained, they answered repeatedly that it would not injure them; that Baca was a good man, and would assist them in whatever might offer for the royal service. The papers constituting the expediente come from the archives and are no doubt genuine. The petitioner in this cause, Margarito Baca, is shown to be a descendant of one of the original grantees, and has been many years in possession of the land granted. The title was complete and perfect long prior to the acquisition of this Territory by the United States, and should be confirmed as such, unless some of the objections urged on behalf of the Government should be sustained.

It is insisted that the grant is for the pasturage of stock and only vested in the grantees a right to the land for that purpose, but that the legal title remained in the Crown. That question must be determined by an examination of the granting clause of the decree. We see no reason why the Spanish Government might not grant land for the purpose of pasturage as well as for cultivation or any other purpose. In this cause it is quite clear that the petitioners desired a grant to a tract

of land for the purpose of pasturage, and not the mere right to
 107 the use of the land. The governor granted the land as prayed for to them and their successors, and provided that they should not sell to any ecclesiastical person, etc. We think it clear that the grant vested the fee in the grantees. In the case of the pueblos of Santa Ana, Zia, and Jemez, referred to by counsel for the Government, the court held that the grantees were not vested with the fee, but only a right to the use of the land for the purpose of pasturage. But in that case the granting clause of the decree only vested in the grantees the right to the possession of the land for the purpose of pasturage, etc. The decision in that case is not in conflict with the conclusion reached in this case. A large part (if not all) of the lands covered by the grant has been patented to Indian pueblos or individual Indians. Congress confirmed to the town of Cibolleta about 186,000 acres of land and a patent has been issued. This tract covers a large portion of the land in controversy. We are asked to except all the land which has been confirmed by Congress covered by this grant out of a decree of confirmation. This question was fully considered by this court at a former term in the case of the Cuyamungue grant. In that case the court held the grant was complete and perfect at the date of the treaty, and that it should be confirmed. That the question of the right or title of the pueblos claiming under patents issued by the United States to the land within the boundaries of the grant so confirmed should be determined as between the parties themselves by the local tribunals in a proper proceeding instituted for that purpose. We think the decision in that case is correct, and it is conclusive of the question in this case. We are of opinion that the grant is complete and perfect and should be confirmed
 108 to the extent of the boundaries set out in the act of possession in the name of the original grantees, their heirs and assigns, and it is so ordered.

WILLIAM W. MURRAY,
Associate Justice.

109 And be it further remembered that, to wit, on the 16th day of February, A. D. 1898, the January term of said court, held at Santa Fe, Territory of New Mexico, the following order was made, viz:

MARGARITO BACA ET AL.	}	114. Court of private land claims. San Jose del Encinal grant.
vs. UNITED STATES.		

It is ordered by the court that the United States be, and it is hereby, given leave to file an amended answer in said cause.

This February 16, 1898.

JOS. R. REED,
Chief Justice.

110 And be it further remembered that thereafter, to wit, on the 18th day of February, A. D. 1898, there was filed in the office of the clerk of said court an amended answer, which answer is in words and figures following, to wit:

111 UNITED STATES OF AMERICA, *vs.*

MARGARITA BACA ET AL. }

vs.

UNITED STATES. }

No. 114. San Jose de Encinal grant.

Amended answer.

Now comes the defendant, the United States, in the above-entitled cause, and amends its answer heretofore filed in said cause, and shows to the court that there was on the 23rd day of January, A. D. 1810, granted to Francisco Aragon, Francisco Garcia, Anastacio Callegos, and Josefa Baca a tract of land known as and called the Cebolleta grant, with metes and boundaries as follows, to wit: "On the north by the Sierra de San Mateo, on the south by [the mesa] del Gabilan, which joins the rancho de Paguete, on the east by La Cañada del Camino de Zia and Cañada de Pedro Padilla, and on the west by the same mountain of San Mateo." That a petition for the confirmation of said grant was presented to the surveyor-general of New Mexico, by and in behalf of the inhabitants of the town of Cebolleta, as reported No. 46, and that said surveyor-general recommended said grant to Congress for confirmation, and that said grant was by act of Congress approved March 3, 1869, confirmed to said inhabitants of said town of Cebolleta; said act of Congress being in words and figures following, to wit: "An act to confirm certain private land claims in the Territory of New Mexico. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That private land claims numbered forty-one, forty-four, forty-six, and forty-seven, Territory of New Mexico, as known and designated by the numbers aforesaid in the reports of the surveyor-general of the said Territory and on the books of the Commissioner of the General Land Office, be, and the same are hereby, confirmed:

112 Provided, that such confirmation shall only be construed as a quitclaim on [or] relinquishment of all title or claim on the part of the United States to any of the lands not improved by or on behalf of the United States, and not including any military or other reservation embraced in either of the said claims, and shall not affect the adverse rights of any person or persons to the same, or any part or parcel thereof."

Defendant further shows that, pursuant to said confirmation, patent of the United States was duly issued to said claimants of said Cebolleta grant by the proper authorities.

Defendant further shows that some time prior to August 28, 1826, there was granted to certain persons a tract of land known as and called Taguati grant, with its metes and boundaries as follows, to wit: "On the north as far as the table-land of El Gabilan, on the south to La Cuesta, on the west to the Rito de San Jose, and on the east to the Cañoncito Cojo." That long prior to the cession of New Mexico to the United

States, the pueblo of Laguna had by purchase become the owner and possessor of said tract of land. That a claim for said tract of land was presented to the surveyor-general of New Mexico by the said pueblo of Laguna, and that said surveyor-general of New Mexico in the year 1859 recommended said Paguati grant or purchase to Congress for confirmation, as reported number thirty. Defendant further shows that by act of Congress approved June 21, 1860, said Paguati grant or purchase was confirmed to the said pueblo of Laguna; said act of confirmation being in words and figures as follows, to wit:

"AN ACT To confirm certain private land claims in the Territory of New Mexico.

* * * * *

SEC. 3. And be it further enacted, That the private land claims in the Territory of New Mexico, as recommended for confirmation by said surveyor-general in his reports and abstracts marked Exhibit A, as communicated to Congress by the Secretary of the Interior in his letter dated the third day of February, eighteen hundred and sixty, and numbered from twenty to thirty-eight, both inclusive, be, and the same are hereby, confirmed, with the exception of the claim numbered twenty-six, in the name of Juan B. Vigil, which claim numbered twenty-six is not confirmed.

SEC. 4. And be it further enacted, That the foregoing confirmation shall only be construed as quitclaims or relinquishments, on the part of the United States, and shall not affect the adverse rights of any other person or persons whomsoever."

Defendant further shows that, pursuant to said confirmation, letters patent of the United States were duly issued by the proper authorities to the said pueblo of Laguna for said tract of land.

Defendant, further answering, shows that the tract of land herein sued for lies wholly within the confirmed and patented lands of the Cebolleta grant and the Paguati grant, or purchase above mentioned, and that by said acts of confirmation and approval, and by said issue of letters patent, all right or title of the United States in and to said lands were quitclaimed to the claimants aforesaid, and that the United States of America has no right or title remaining in and to said lands, and that therefore no right or title can pass to claimants herein from the United States under and by virtue of any decree of this court or otherwise.

Defendant, further answering, shows that by reasons of the facts aforesaid, the premises herein claimed constitute and are lands the right to which had heretofore been lawfully acted upon and decided by Congress, and that this court has no jurisdiction to confirm to claimants herein, the tract herein claimed or any part thereof.

Wherefore defendant pray that a decree may be entered rejecting said claim and dismissing said petition.

MATT. G. REYNOLDS,
U. S. Attorney.

114 And be it further remembered that, to wit, on the 17th day of May, A. D. 1898, at the May term of said court, held at Santa Fe, Territory of New Mexico, the following order was made, viz:

MARGARITO BACA ET AL.	}	No. 114. San Jose del Encinal tract.
<i>vs.</i>		
UNITED STATES.		

In the above-entitled cause coming on to be heard on the verbal motion of R. E. Twitchell, esq., that no decree of confirmation be entered of record in this cause until the Supreme Court of the United States shall have decided the Cuyamungue case, No. 112 on the docket of this court, and the court being advised in the premises grants said motion.

It is therefore ordered by the court that no decree of confirmation be entered of record until the Supreme Court shall have decided the Cuyamungue case, No. 112, now pending on appeal before the said Supreme Court.

115 And be it further remembered that thereafter, to-wit, on the 11th day of May, A. D. 1900, the same being the sixteenth day of the April, 1900, term of said court, held at Santa Fe, in the Territory of New Mexico, the court gave judgment as follows, to-wit:

In the U. S. Court of Private Land Claims, Santa Fe, New Mexico, April term, 1900.

MARGARITO BACA, FOR HIMSELF AND	}	No. 114. San Jose del Encinal land grant.
others,		
<i>versus</i>		
THE UNITED STATES, THE PUEBLO OF	}	
Laguna, the Cebolleta Grant, and		
others.		

Final decree.

This cause having heretofore come on to be heard upon the pleadings and exhibits on file, and upon full and legal proofs introduced and taken in the cause, both written and oral, and upon the original and other documents regarding said claim from file number 104 in the office of the surveyor-general of the Territory of New Mexico and from other sources in said office, and the court having considered the same and having heard counsel for all of the parties to the cause, and being fully advised in the premises, and on due consideration thereof, doth make the following findings of fact and law, that is to say:

1. That in the year A. D. 1768, a valid and perfect title in fee simple to all of the land of the sitio de San Jose de Encinal, situated in what is now Valencia County, New Mexico, was by the proper officers of the Spanish Government, the then sovereign power of what is now the Territory of New Mexico, granted in equal shares unto Baltazar Baca and his two sons, and which said tract of land, situated in said county as aforesaid, was and is described as follows, that is to say: it is bounded on the east by a table-land; thence it extends westward five thousand Castilian varas to a sharp-pointed black hill; on the north it is bounded by the Cebolleta Mountain; on the south it is bounded by some white bluffs, at whose base runs the Zuni Road—all as the same is known and designated upon the maps, plats, and surveys in file number 104 in the office of the surveyor-general of the Territory of New Mexico.

2. That such title so remained in said grantees and their successors from thence hitherto, and up to and including the time of the cession of the land now comprised in the Territory of New Mexico to the United States and has so continued from thence to the present time.

3. That the said grantees and their successors have from the time of the making of said grant complied with all conditions necessary to the validity of the same.

4. That such title in such grantees and their successors to said tract of land was and is complete, valid, and perfect, and so was at the date of the cession of the land now comprised in the Territory of New Mexico to the United States by the treaty of Guadalupe Hidalgo; and the same was and is such a title as the United States is bound to recognize and confirm by virtue of said treaty and otherwise.

5. That the claimant, Margarito Baca, is a lineal descendant of the said Baltazar Baca, one of the original grantees.

6. But the court further finds, as matter of fact, that the land comprised within the tract aforesaid is included within the outboundaries of the town of Cebolleta grant, reported number 46, and the Paguete purchase tract, reported number 30, the said Cebolleta grant having been confirmed to the claimants thereof by an act of Congress approved

116 March 3d, A. D. 1869, and thereupon duly patented to said claimants by the proper authorities of the United States, and the said Paguete purchase tract having been confirmed to the Indians of the pueblo of Laguna by an act of Congress approved June 21, 1860, and thereupon patented to said pueblo by the proper authorities of the United States.

7. Wherefore it is considered and adjudged by the court that a complete, valid, and perfect title in and to the tract of land above described was and is vested in the said Baltazar Baca and his two sons and their successors in interest, but that notwithstanding such fact that this court is without jurisdiction, because of the patents for the said land so as aforesaid issued by the United States, to decree and confirm the same unto them, or to order a survey thereof for such purpose, and for such reason no other or different relief than the pronouncing upon the character of the claimant's title as aforesaid is or will be granted by this court, and it is so ordered.

(Signed)

JOSEPH R. REED,
Chief Justice.

117 And be it further remembered that thereafter, to wit, on the 17th day of July, 1900, a petition and an order were filed with the clerk of said court, which petition and order were and are in the words and figures following, to wit:

118

*Appeal and allowance.*UNITED STATES OF AMERICA, *ss:*

Court of Private Land Claims, Santa Fe district.

MARGARITO BACA, PLAINTIFF AND
appellee,*vs.*THE UNITED STATES, DEFENDANT
and appellant.The pueblo of Laguna and the
owners of the town of Cebol-
leta grant.

The above-named defendant, the United States, considering itself aggrieved by the decree entered on the eleventh day of May, 1900, in the above-entitled proceeding, doth hereby appeal from said decree to the Supreme Court of the United States, and it prays that this appeal be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

MATT. G. REYNOLDS,

U. S. Attorney, for Defendant and Appellant.

And now, to wit, on July 17, 1900, it is ordered that the appeal be allowed as prayed for.

(Signed)

WILBUR F. STONE,

Asso. Justice.

(Indorsed:) No. 114. F. No., 14. In the Court of Private Land Claims. Margarito Baca vs. United States. San Jose del Encinal grant. Appeal and allowance. Filed in the office of the clerk, Court of Private Land Claims, July 17, 1900. Jas. H. Reeder, clerk, by Ireneo L. Chaves, deputy.

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And be it further remembered that thereafter, to wit, on the 19th day of July, A. D. 1900, a citation was filed with the clerk of said court, which citation is in the words and figures following, to wit:

120

*Citation on appeal to Supreme Court.*UNITED STATES OF AMERICA, *ss:**The President of the United States to Margarito Baca, greeting:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, to wit, sixty days from and after the date of this citation, pursuant to an appeal filed in the office of the clerk of the Court of Private Land Claims, wherein the United States is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 17th day of July, in the year of our Lord one thousand nine hundred.

WILBUR F. STONE,

Asso. Justice, Court of Private Land Claims.

I hereby acknowledge service of the foregoing citation for and on behalf of the plaintiff and appellee, this 18th day of July, 1900.

B. S. RODEY,
Attorney for Appellee.

(Indorsed:) No. 114. F. No., 15. In the Court of Private Land Claims. Margarito Baca vs. United States. San Jose del Encinal grant. Citation on appeal. Filed in the office of the clerk, Court of Private Land Claims, July 19, 1900. Jas. H. Reeder, clerk, by Ireneo L. Chaves, deputy.

121 UNITED STATES OF AMERICA,

Territory of New Mexico, ss:

I, James H. Reeder, clerk of the Court of Private Land Claims, do hereby certify that the foregoing 120 pages contain a full, true, and perfect transcript of record entries and proceedings and of all the files and papers in the cause lately pending in said court, in which Margarito Baca et al. were plaintiffs and the United States of America were defendants, as the same appear of record and on file in my office.

Witness my hand and the seal of said court at my office in Santa Fe, New Mexico, this 8th day of September, A. D. 1900.

[SEAL.]

JAMES H. REEDER,
Clerk,

By IRENEO L. CHAVES,
Deputy.

(Indorsement on cover:) File No., 17922. Court of Private Land Claims. Term No., 170. The United States, appellant, vs. Margarito Baca. Filed October 2d, 1900.

No. 170.

Office Supreme Court U. S.

FILED

JAN 25 1902

JAMES H. MCKENNEY

By. of c Atty. General (Richardson
Reynolds) for c Appt.
Filed Jan. 25, 1902.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANT, }
v. } No. 170.
MARGARITO BACA.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.



In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANT,	} No. 170.
<i>v.</i>	
MARGARITO BACA.	

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT.

On February 23, 1893, the plaintiff filed his petition in the Court of Private Land Claims against the United States for the confirmation of the Baltazar Baca or San Jose del Encinal grant, situate in New Mexico, alleging that the tract had been granted to his ancestors, Baltazar Baca and his two sons, about the year 1768 or 1769, by Pedro Fermin de Mendinueta, the then governor and captain-general of New Mexico, setting forth verbatim the muniments of title upon which he relies, and a translation of the same. (R., 3-9.)

He alleges that there are no persons in possession of any portion of the tract claimed, with the exception of some few Indians of the pueblo of Laguna, whose

names are unknown to the petitioner; that the tract contains something between 15,000 and 30,000 acres; that the same was petitioned for to the surveyor-general of New Mexico under the act of July 22, 1854, proceedings had, and the grant by him recommended to Congress for confirmation (R., 2); that the petitioner has been for forty-five years last past residing upon the tract, together with other of the descendants of the original grantee. (R., 9.) With other allegations, not now material, the petition closes with an elaborate prayer for relief, the effect of which is that the grant may be inquired into by the court and confirmed to him. (R., 10.)

The United States filed an answer (R., 12, 13) after the trial by consent of the court (R., 42, 43), which was subsequently superseded with consent of the court (R., 66) by an amended answer (R., 67, 68) which presents clearly the contentions advanced by the United States why the court should dismiss the petition, to wit:

That the tract of land claimed lies wholly within the lands confirmed by Congress to the town of Cebolleta and the pueblo of Laguna by the acts of June 21, 1860, and March 3, 1869, respectively, pursuant to which patents of the United States were duly issued by the proper authorities to the said claimants (R., 67, 68); that by reason thereof the premises claimed are lands the right to which had theretofore been lawfully acted upon and decided by Congress, and that the court had no jurisdiction to confirm to the claimants the tract claimed or any part thereof. It was the contention of

the United States that this condition of affairs (sustained by the evidence [R., 45-61] and admitted by the court in its decree [R., 70, paragraph 6]) brought the case within the prohibition expressed in subsection 4 of section 13 of the act of March 3, 1891, as follows (26 Stat. L., p. 854):

No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress or under its authority.

The holders of the confirmed grants to the town of Cebolleta and the pueblo of Laguna entered their appearance in the case. (R., 62-64.)

A trial was had at which oral evidence was presented both for the claimant and the Government (R., 15-42) the substance of which was to the effect that the claimant had only been in possession of about 30 acres of the tract claimed. Consideration of this phase of the case is not now necessary, because of the theory the United States advanced, to wit, that all the lands claimed had theretofore been confirmed by Congress to other parties and patents issued in pursuance thereof. In support of its contention the Government introduced in evidence various documents and plats (R., 45-61) which convinced the court below that the contention was well founded, and the decree of the court in the case contains the following paragraph (R., 70):

6. But the court further finds, as matter of fact, that the land comprised within the tract aforesaid is included within the outboundaries of the town of Cebolleta grant, reported num-

ber 46, and the Paguate purchase tract, reported number 30; the said Cebolleta grant having been confirmed to the claimants thereof by an act of Congress approved March 3, A. D. 1869, and thereupon duly patented to said claimants by the proper authorities of the United States, and the said Paguate purchase tract having been confirmed to the Indians of the pueblo of Laguna by an act of Congress approved June 21, 1860, and thereupon patented to said pueblo by the proper authorities of the United States. (R., 70.)

Bearing in mind the prohibition of subsection 4 of section 13 of the creative act, and considering in connection therewith the paragraph of the decree just quoted, a perusal and appreciative consideration of the paragraph of the decree immediately following it certainly attracts one's inquisitive attention, to say the least, to wit:

7. Wherefore it is considered and adjudged by the court that a complete, valid, and perfect title in and to the tract of land above described was and is vested in the said Baltazar Baca and his two sons, and their successors in interest, but that notwithstanding such fact that *this court is without jurisdiction, because of the patents for the said land so as aforesaid issued by the United States, to decree and confirm the same unto them, or to order a survey thereof for such purpose, and for such reason no other or different relief than the pronouncing upon the character of the claimant's title as aforesaid is or will be granted by this court, and it is so ordered.* (R., 70.)

ARGUMENT.

The record in this case presents a strange anomaly in jurisprudence. In one breath the court declares that it is without jurisdiction over this claim, and in the next breath it says that it will pronounce upon the character of the title presented, and adjudges it to be a complete, perfect, and valid grant.

The error of the court in pronouncing upon the character of claimant's title is obvious, because jurisdiction over the land for any purpose is specifically denied that tribunal, if it should find that the right to the land has been lawfully acted upon by Congress: "No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress or under its authority." (Subsection 4, section 13.) (*United States v. Conway*, 175 U. S., 60.)

Such explicit and stubborn mandate defies any attempt to pervert its plain direction by ingenious argument or relative construction with the other provisions of the act. It is one of the limiting provisions upon a special jurisdiction which the act conferred upon the court. The act provided that claims under title derived from the Spanish or Mexican Government, of two general classes, perfect and imperfect, might be examined into by the court, and then by various restrictions proceeds to narrow that jurisdiction by excepting certain of those claims, to wit: It provided that unless imperfect claims should be presented within two years, they should be barred; that no claim should

be allowed which would overthrow any just and unextinguished Indian title or rights; that no claim to lands which have been disposed of by the United States shall be allowed; that no allowance of any claim shall confer any mineral rights, and by other eliminating provisions a constriction of this jurisdiction was secured, among which is subsection 4 of section 13 relating to lands the right to which has been acted upon by Congress.

The confirmation of all lawfully and regularly derived claims which fell within the limits of the jurisdiction outlined in the act was the principal object and purpose of the act, and to that end Congress provided methods of procedure and laid down rules and principles for the court's determination of whether that confirmation could be given; and it further provided machinery for giving definitive effect to that confirmation. If the confirmation could not be granted because of former recognition of the rights of others to the same lands by the political branch of the Government, the court was required to dismiss the petition or reject the claim. A confirmation necessarily follows an affirmative finding on the merits of the case. An affirmative finding without the sequential confirmation necessarily amounts to nothing, is pure dictum, and in this case has done serious stricture to the fundamental principle that "the law never does a vain thing."

In every legal investigation the first inquiry is as to the jurisdiction. Jurisdiction is the *sine qua non* of every legal investigation; it is the technical license for every judicial inquiry into the merits. It is the first

anxiety of every tribunal in entertaining an action. When it is determined that jurisdiction does not exist, there the matter must end so far as the court is concerned, and, whatever its further powers and prerogatives may be, at the instant it finds that jurisdiction over the matter is not in it, at that very instant it becomes *functus officio*.

In the case at bar the court first passed upon the merits of the claim, and adjudged the title to be complete, perfect, and valid, but then found a want of jurisdiction a bar to the granting of the relief asked.

It should not have pronounced upon the character of title which it had no jurisdiction to determine. The United States relied upon want of jurisdiction or authority in the court, and did not go into or attempt to test the validity or character of the title, if any, held by the claimant. The court should have followed its defined duty upon discovery that it was without jurisdiction of the subject of the case, and adopted language similar to that of this court in the case of *United States v. Roselius* (15 How., 37):

We, of course, express no opinion as to the sufficiency of the evidence to maintain the complete and perfect title claimed in the petition. That question is not before us on this appeal; for, as the district court had no authority to decide upon it, the decree must be reversed for want of jurisdiction, and the petition dismissed. But we shall dismiss it without prejudice to the legal rights of either party, leaving the petition

at liberty to assert his rights in any court having competent jurisdiction.

By the finding that the grant in 1768 vested "a valid and perfect title in fee simple" in the grantee (R., 69), and "that such title remained in said grantees and their successors from thence * * * to the present time" (R., 70), notwithstanding that it also found that all the lands within the limits of the grants had been confirmed by Congress to other parties in 1860 and 1869, the court has declared that the action by Congress is void and the patents of no effect by reason of the petitioner's superior title to the same land. While the question of the superiority of these titles was not tried and submitted to the Court of Private Land Claims, and the assumption that the title asserted to the land was perfect and of full vigor might have been overthrown upon grounds of abandonment and resumption of the land by regrant to others, the decree of the court is tantamount to a judicial criticism upon the action of Congress, the reservoir from which flows its own authority and which expressly prohibited the court exercising its functions over lands "the right to which has hitherto been lawfully acted upon by Congress or under its authority."

The finding made by the Court of Private Land Claims of the validity of the title only tends to add to the difficulties which will attend a contest between this title and that under which the two claims of Cebolleta and Laguna, confirmed by Congress, are held. The private rights of these conflicting claimants to the same

land are reserved to the local courts for their exploitation and determination.

The decrees of every tribunal should be treated as solemn and serious findings. A certain dignity inevitably attaches to the expressed opinions of courts, even if they be dicta. Great weight will be sought to be given to the finding of the Court of Private Land Claims that this title is complete, perfect, and valid, for it will be urged that the Court of Private Land Claims is a tribunal charged with this special line of investigation, and consequently better qualified, by reason of such and its vast experience and research therein, to pass correct judgment upon this title than a local tribunal of general jurisdiction and scope comprehending every phase of litigious inquiry. Hence, if this decree be allowed to stand, with its finding and adjudication of the validity of the title, its tremendous influence upon the consideration of the issues between the contesting claimants in the local courts is at once apparent—an influence which Congress by the plainest language prohibited the court from extending.

This decree was withheld by the Court of Private Land Claims awaiting the decision of this court in the case of *Conway v. United States* (175 U. S., 60), which involved similar issues (R., 69), although it would seem that the court did not follow the rulings of this court in that case.

That case involved overlapping grants, wherein the Court of Private Land Claims declined to except out of the decree of confirmation the lands patented to the

pueblos of Nambe and Pojoaque by Congress; and after finding the petitioner's claim to be complete, perfect, and valid, it said:

If the petitioners in this case have a complete and perfect title to the land in question under the grant of 1731, it necessarily followed that the pueblos of Nambe and Pojoaque have no right or title to any of the land within the boundaries of such complete and perfect grant. But the decree of this court does not in any way affect the right and title, if any, that the pueblos acquired by their patents from the United States, as between them and the petitioners.

In its opinion this court said:

Nothing can be plainer from the language of the private land claim act * * * that no claim shall be allowed for any land the right to which has been lawfully acted upon by Congress (sec. 13). (175 U. S., 67, 68.)

Nor is this the proper time to adjudicate upon the respective merits of the two titles. * * * The duty of the court under section 8, "to hear, try, and determine the validity of the same" (the grant) "and the right of the claimants thereto, its extent, location, and boundaries," is discharged by determining the extent and validity of the grant as between the United States and the grantee, and it is not incumbent upon the Court of Private Land Claims to determine the priority of right as between him and another grantee. Such private rights are care-

fully preserved in the eighth and thirteenth sections. (Ibid., 69.)

When the title has once been confirmed by Congress it should be respected by the Court of Private Land Claims as if it were a confirmation by the court itself. (Ibid., 70.)

The decree of the Court of Private Land Claims does amount to a determination of the priority of the conflicting titles, for in paragraph 1 it finds that in 1768 "a valid and perfect title in fee simple" to the land was granted (R., 69), and in paragraph 2 it finds "that such title remained in said grantees and their successors from thence hitherto * * * to the present time" (R., 70), notwithstanding in paragraph 6 it finds that the same lands were confirmed by Congress in 1860 and 1869 to other parties. Certainly, in finding the petitioner to be vested with a "valid and perfect title in fee simple," the titles of the Cebolleta and Laguna confirmed by Congress have not been "respected by the Court of Private Land Claims as if it were a confirmation by the court itself."

Section 9 of the private land claims act, after providing for an appeal to this court, says:

On any such appeal the Supreme Court shall retry the cause * * * and may amend the record of the proceedings below as truth and justice may require; and on such retrial and hearing every question shall be open, and the decision of the Supreme Court thereon shall be final and conclusive.

It is submitted that the court below should be by this court directed to amend its record and decree by striking out all that part of the latter as follows:

1. That in the year A. D. 1768 a valid and perfect title in fee simple to all of the land of the sitio de San Jose de Encinal, situated in what is now Valencia County, N. Mex., was by the proper officers of the Spanish Government, the then sovereign power of what is now the Territory of New Mexico, granted in equal shares unto Baltazar Baca and his two sons, and which said tract of land, situated in said county as aforesaid, was and is described as follows, that is to say: It is bounded on the east by a table-land; thence it extends westward 5,000 Castilian varas to a sharp-pointed black hill; on the north it is bounded by the Cebolleta Mountain; on the south it is bounded by some white bluffs, at whose base runs the Zuni Road—all as the same is known and designated upon the maps, plats, and surveys in file No. 104 in the office of the surveyor-general of the Territory of New Mexico.

2. That such title so remained in said grantees and their successors from thence hitherto and up to and including the time of the cession of the land now comprised in the Territory of New Mexico to the United States, and has so continued from thence to the present time.

3. That the said grantees and their successors have from the time of the making of said grant complied with all conditions necessary to the validity of the same.

4. That such title in such grantees and their successors to said tract of land was and is complete, valid, and perfect, and so was at the date of the cession of the land now comprised in the Territory of New Mexico to the United States by the treaty of Guadalupe Hidalgo, and the same was and is such a title as the United States is bound to recognize and confirm by virtue of said treaty and otherwise.

5. That the claimant, Margarito Baca, is a lineal descendant of the said Baltazar Baca, one of the original grantees.

6. But the court further finds, as matter of fact—

* * * * *

7. Wherefore it is considered and adjudged by the court that a complete, valid, and perfect title in and to the tract of land above described was and is vested in the said Baltazar Baca and his two sons and their successors in interest, but that notwithstanding such fact, that this court is without jurisdiction because of the patents for the said land so as aforesaid issued by the United States, to decree and confirm the same unto them, or to order a survey thereof for such purpose, and for such reason no other or different relief than the pronouncing upon the character of the claimant's title as aforesaid is or will be granted by this court, and it is so ordered. (R., 69-70.)

And the Court of Private Land Claims should be further directed to dismiss the petition without prejudice to any rights the claimant may have under his

title, without extending to him the assistance of their opinion in the form of a decree, and adjudging the solemn validity of his grant and title.

Respectfully submitted.

JOHN K. RICHARDS,

Solicitor-General.

MATTHEW G. REYNOLDS,

Special Assistant to the Attorney-General.

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170.

Office Supreme Court U. S.
FILED
JAN 31 1902
JAMES H. MCKENNEY,
Clerk.

By. of Rodey for Appellee.

Filed Jan. 31, 1902.
Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 170.

THE UNITED STATES, APPELLANT,

vs.

MARGARITO BACA.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

**BRIEF ON BEHALF OF MARGARITO BACA,
APPELLEE.**

B. S. RODEY,
Attorney for Appellee.

(17,922.)



2000

Supreme Court of the United States

OCTOBER TERM, 1901.

No. 170.

THE UNITED STATES, APPELLANT,

VS.

MARGARITO BACA.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

**BRIEF ON BEHALF OF MARGARITO BACA,
APPELLEE.**

Statement.

Counsel for appellant has made a reasonably fair statement of this case in his brief. It is therefore not necessary to repeat it here in detail. There being but one question in the case for the consideration of the court, the following brief summary of facts will, perhaps, suffice:

In about the year A. D. 1768 the governor and captain general of the then Spanish ultramarine province of New Mexico made a grant of land, comprising a tract, which, as

surveyed in about the year A. D. 1878, amounted to 12,207.08 acres, to Baltazar Baca and his two sons. The land is situated in what is now central Valencia county, in the Territory of New Mexico, northwest of the Indian pueblo of Laguna and southwest of the hamlet of Cebolleta. The grantees went at once into possession, and through their descendants so continued in possession of and to live upon the same ever since.

In 1860, while appellees were thus in possession of the land, Congress, by an act of June 21 of that year, confirmed the "Town of Cebolleta land grant" to its people, which, it is contended, was confirmed for many thousands of acres more than it should have contained, and later, by the act of March 3, 1869, confirmed to the people of the Indian pueblo of Laguna what is known as the "Paguete Purchase" land grant, and patents issued accordingly to the grantees. These two land grants thus confirmed and patented adjoin each other and form a large compact body of land of some 275,000 acres, and includes within its boundaries the whole of the comparatively small tract in question. (See transcript of record, with its accompanying maps.)

In 1874, the claimants of the grant in question, being still, as aforesaid, in possession of the same and living upon it, proved up their title before the then surveyor general of the Territory of New Mexico under the eighth section of the act of Congress of July 22, 1854, and that official, finding the archive evidence and the title perfect, recommended the same to Congress for confirmation (Record, p. 9). Congress, however, never took any action upon it.

In 1893, shortly after the creation of the Court of Private Land Claims, appellee filed a petition before it for the con-

firmation of the tract to him and his co-owners. On the trial he made out a perfect case, and the court held that he and his co-owners (the legal representatives of the original grantees) were vested with a complete, valid, and perfect title in and to the grant, as will be seen by the decree of the court, which is as follows :

" This cause having heretofore come on to be heard upon the pleadings and exhibits on file, and upon full and legal proofs introduced and taken in the cause, both written and oral, and upon the original and other documents regarding said claim from file number 104 in the office of the surveyor general of the Territory of New Mexico and from other sources in said office, and the court having considered the same and having heard counsel for all of the parties to the cause, and being fully advised in the premises, and on due consideration thereof, doth make the following findings of fact and law, that is to say :

" 1. That in the year A. D. 1768, a valid and perfect title in fee-simple to all of the land of the Sitio de San Jose de Encinal, situated in what is now Valencia county, New Mexico, was by the proper officers of the Spanish government, the then sovereign power of what is now the Territory of New Mexico, granted in equal shares unto Baltazar Baca and his two sons, and which said tract of land, situated in said county as aforesaid, was and is described as follows, that is to say : it is bounded on the east by a tableland ; thence it extends westward five thousand Castilian varas to a sharp-pointed black hill ; on the north it is bounded by the Cebolleta mountain ; on the south it is bounded by some white bluffs, at whose base runs the Zuñi road—all as the same is known and designated upon the maps, plats, and surveys in file number 104 in the office of the surveyor general of the Territory of New Mexico.

" 2. That such title so remained in said grantees and their successors from thence hitherto, and up to and including the time of the cession of the land now comprised in the Territory of New Mexico to the United States and has so continued from thence to the present time.

" 3. That the said grantees and their successors have from

the time of the making of said grant complied with all conditions necessary to the validity of the same.

"4. That such title in such grantees and their successors to said tract of land was and is complete, valid, and perfect, and so was at the date of the cession of the land now comprised in the Territory of New Mexico to the United States by the treaty of Guadalupe Hidalgo; and the same was and is such a title as the United States is bound to recognize and confirm by virtue of said treaty and otherwise.

"5. That the claimant, Margarito Baca, is a lineal descendant of the said Baltazar Baca, one of the original grantees.

"6. But the court further finds, as matter of fact, that the land comprised within the tract aforesaid is included within the outboundaries of the Town of Cebolleta grant, reported number 46, and the Paguate Purchase tract, reported number 30, the said Cebolleta grant having been confirmed to the claimants thereof by an act of Congress approved March 3d, A. D. 1869, and thereupon duly patented to said claimants by the proper authorities of the United States, and the said Paguate Purchase tract having been confirmed to the Indians of the pueblo of Laguna by an act of Congress approved June 21, 1860, and thereupon patented to said pueblo by the proper authorities of the United States.

"7. Wherefore it is considered and adjudged by the court that a complete, valid, and perfect title in and to the tract of land above described was and is vested in the said Baltazar Baca and his two sons and their successors in interest, but that notwithstanding such fact that this court is without jurisdiction, because of the patents for the said land so as aforesaid issued by the United States, to decree and confirm the same unto them, or to order a survey thereof for such purpose, and for such reason no other or different relief than the pronouncing upon the character of the claimant's title as aforesaid is or will be granted by this court, and it is so ordered."

Before entering the foregoing decree, the court below rendered an opinion in the case (Record, pp. 65, 66), but because what is known as the "Cuyamungue Case," U. S. vs. Conway, 175 U. S., 60, and the case of Real de Dolores Del

Oro vs. The United States, *id.*, 71, had theretofore been argued before it, and were then pending in this court on appeal, it suspended its decree of confirmation (Record, p. 69) until those cases should be decided, and, when that was done, entered the final decree as aforesaid. It will thus be seen that the Court of Private Land Claims, when it entered its decree above set out in full, did so with full knowledge of and in the light of the mandate and authority of this court. For that reason it cannot be contended that the court below made no effort to conform to the law.

ARGUMENT.

The contention of appellant here, as appellee understands it, is against the action of the court below in granting any relief whatever to appellee, and in not dismissing his petition for want of jurisdiction.

This raises the question, pure and simple, and it is the only question in the case, as to whether or not the Court of Private Land Claims, under the act creating it, 26 Stats., 854, is clothed with the duty, or vested with the power, to "pronounce upon the character" of claimant's titles to land under a Spanish or Mexican grant, when Congress has theretofore, however inadvertently or wrongfully, patented the whole of the same to some one else?

The Court of Private Land Claims, after due and mature consideration of the subject, and after viewing it in the light and under the command of this court, as the law is stated in the opinions above referred to, held that it had such power, hence the decree complained of.

The decision of this question must necessarily turn upon the construction to be given to the land-court act. Those portions of it that apply here are as follows:

Section 6 of the act provides, among other things:

* * *

"And the said court is hereby authorized and required to take and exercise jurisdiction of all cases or claims presented by petition in conformity with the provisions of this act, and to hear and determine the same, as in this act provided, on the petition and proofs in case no answer or answers be filed after due notice, or on the petition and the answer or answers of any person or persons interested in preventing any claim from being established, and the answer of the attorney for the United States where he may have filed an answer, and such testimony and proofs as may be taken." * * *

Section 8 of the act provides:

"That any person or corporation claiming lands in any of the States or Territories mentioned in this act under a title derived from the Spanish or Mexican governments that was complete and perfect at the date when the United States acquired sovereignty therein, shall have the right (but shall not be bound) to apply to said court in the manner in this act provided for other cases for a confirmation of such title; and on such application said court shall proceed to hear, try, and determine the validity of the same and the right of the claimant thereto, its extent, location and boundaries, in the same manner and with the same powers as in other cases in this act mentioned.

"If in any such case, a title so claimed to be perfect shall be established and confirmed, such confirmation shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States, and always subject to and not to affect any conflicting private interests, rights, or claims held or claimed adversely to any such claim or title, or adversely to the holder of any such claim or title. And no confirmation of claims or titles in this section mentioned shall have any effect other or further than

as a release of all claim of title by the United States; and no private right of any person as between himself and other claimants or persons, in respect of any such lands, shall be in any manner affected thereby." * * *

The fourth subdivision of section 13, which is the particular clause that appellant claims is fatal to the decree below, is as follows:

"No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress, or under its authority."

It is respectfully submitted that the Court of Private Land Claims acted entirely within its jurisdiction when it "pronounced upon the character of claimant's title" in this case. Does not the very act creating the court, as quoted above, say, "If in any such case, a title *so* claimed to be perfect shall be established and confirmed; such confirmation shall be for as much land only as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States"? Can it make any difference that it has all been disposed of? Must not the court establish the title, even though it cannot confirm the land in the claimant?

Now, suppose the Government of the United States had wrongfully disposed of every acre but one of a land grant containing 100,000 acres and the true owner should come before the land court and show a perfect title to the entire tract, it will surely not be contended but what the court would have the right and would be bound to "pronounce upon the character of the title" to such entire tract, although it could confirm to him and give him possession of but a single acre. It would seem from the parts of the land-

court act quoted above that the court is "required to take and exercise jurisdiction of *all cases* or claims presented by petition in conformity with the act, and to hear and determine the same as in the act provided ;" and, further, in section 8, also quoted above, it is provided that any person claiming lands in any of the States and Territories mentioned in the act under a title that was *complete and perfect* at the time when the United States acquired the sovereignty, *shall have the right* (but shall not be bound) to apply to said court in the manner in this act provided for other cases for a confirmation of such title. Now, mark the succeeding language, "If in any such case a title so claimed to be perfect shall be *established and confirmed*, such confirmation shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such lands that shall have been disposed of by the United States." Now, what does this language mean unless it means that a person having a perfect title is entitled to and has the right to come into the court and have the court say that his title is perfect? The fact that the United States may have wrongfully disposed of his land, and that the court can give him no relief as to that, does not affect his right to come into the court which is the only tribunal with jurisdiction to try such matters as between the claimant and the United States.

Such claimant, as between himself and the Government, never had his title passed upon by any tribunal. Is he not required, as matter of law, before he can assert his title in the local courts as between himself and the United States, to go into the land court and have it say whether he has any title at all as against the Government? Even though

it can be said under the ruling of this court in the Ainsa case, 175 U. S., 76, that the local courts of New Mexico, pending the existence of the land court, have jurisdiction to pass upon perfect titles that were never submitted either to Congress or the Court of Private Land Claims, still is not that jurisdiction simply concurrent, and is not the claimant to such a perfect grant entitled to elect which of the courts he will first go into? In the land court he can have the benefit of the land-court act, which makes the archives in the surveyor general's office evidence in his favor, and he can have the benefit of its rules and liberal mode of procedure, it not being "limited to the dry technical rules of a court of law," as was held in Ealy's case, 171 U. S., 220. If the claimant was the owner of 100,000 acres of land under perfect Spanish title, and the Government had not interfered in any manner with such land, save to assume that it was public domain, such claimant would surely have the right under this act to come into the land court and have his title confirmed, and the grant would at once be segregated from the public domain.

The whole tenor of this land-court act is to the effect that the desire of the Government in creating the court was to settle all questions of title as between itself and all claimants to any portion of the public domain, and not to interfere in any manner with the conflicting titles of owners or claimants as between themselves (Conway's case, *supra*). Every patent the Government issues under the decrees of this court is a mere quitclaim between the Government and the grantee. Even though the Government may have quitclaimed the land to one person, the question of the perfect title of somebody else to that same land as between such

person and the United States may still be a subject for investigation. Some court will have to pass on it. The patent wrongfully issued by the Government for it is a mere nullity. Then why cannot this land tribunal "pronounce upon such title"?

This claimant is not calling upon the Government to make him a grant. His title is perfect already. It is superior to any right of the Government, save that of sovereignty. All he gets by this action of the land court is that it finds that he has a perfect title. His remedy thereafter is in another tribunal.

They are cases, that Congress had in view when it used the language above quoted, that "no claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress or under its authority," as, for instance, the case of *Las Animas Land Grant Company vs. United States*, 179 U. S., 200, which was a case where Congress itself tried the question of the claimant's right to the grant and confirmed and patented a portion only of his claim, and he afterwards came into the land court and tried to get from it what he failed to get from Congress—that is, the whole of his original claim.

All the parties in interest—that is, the town of Cebolleta people and the Indians of Pueblo Laguna, the patentees of the Government of different portions of this same land—were in court when this question was passed upon, and had their day. The court, under the ruling in the Conway case, because of the patents issued to such other grantees, refused "to decree and confirm" the land to this appellee, and gave him no relief save "the pronouncing upon the character of his title."

Surely appellee, under the land court act, and in all equity and good conscience, is entitled when he goes into the local courts to have his claim clothed with the dignity and sanctity of this mere "pronouncement of the Court of Private Land Claims as to the character of his title," as against the dignity of a United States patent, perhaps wrongfully or inadvertently issued to his opponents, for property to which the United States never had title.

Finally, it is most respectfully submitted that the Court of Private Land Claims has in no sense contravened or exceeded its powers under its creative act, but has carefully avoided overstepping the same, and has but done this appellee the meager justice which the limitations upon its power, as set out in the opinion of this court in the Conway case, *supra*, permitted it to do, and that therefore the decision of the court below should be affirmed.

All of which is most respectfully submitted.

B. S. RODEY,
Attorney for Appellee.

Supreme Court of the United States.

No. 170.—OCTOBER TERM, 1901.

The United States, Appellant,	}	Appeal from the Court of Private Land Claims.
vs.		
Margarito Baca.		

This was a petition to the Court of Private Land Claims by Margarito Baca for the confirmation to him, and to all other persons interested, of the title to a tract of land in Valencia county in New Mexico, known as the San Jose del Encinal tract, alleged to have been granted to Baltazar Baca and his two sons in 1768 by the Spanish Governor and Captain General of New Mexico.

The petition prayed the court to take and exercise jurisdiction of the petition; to hear and determine all questions relative to the tract, its extent, proper location and boundaries, and whether, when properly located, it would in any manner conflict with any neighboring property to which there was superior title; to take cognizance of all other matters connected therewith fit and proper to be heard and determined; and by final decree to settle and determine the questions of the proper location of the tract, the validity of the title, and the boundaries thereof; to finally determine and forever set at rest all other questions properly arising between the petitioner and his co-owners and the United States; to confirm the title of the petitioner and his co-owners to them in fee simple; and for further relief.

The United States, by an amended answer filed by leave of court, alleged, among other things, that the tract demanded lay wholly within the lands granted and confirmed by Congress to the town of Cebolleta, reported as number 30, and to the pueblo of Laguna, reported as number 46, by the acts of June 21, 1860, c. 167, (12 Stat. 71,) and March 3, 1869, c. 152, (15 Stat. 454,) respectively; and that, the right to this tract having been thus lawfully acted upon and decided by Congress, the Court of Private Land Claims had no jurisdiction to allow the claim of the petitioner.

The Court of Private Land Claims, upon hearing and consideration, suspended proceedings until after the decision of this court in *United States v. Conway*, 175 U. S. 60, and then entered the following decree:

"This cause having heretofore come on to be heard upon the pleadings and exhibits on file, and upon full and legal proofs introduced and taken in the cause, both written and oral, and upon the original and other documents regarding said claim from file number 104 in the office of the sur-

veyor-general of the Territory of New Mexico and from other sources in said office; and the court having considered the same, and having heard counsel for all of the parties to the cause, and being fully advised in the premises, and on due consideration thereof, doth make the following findings of fact and law, that is to say:

"1. That in the year 1768, a valid and perfect title in fee simple to all of the land of the sitio de San Jose de Encinal, situated in what is now Valencia county, New Mexico, was by the proper officers of the Spanish Government, the then sovereign power of what is now the Territory of New Mexico, granted in equal shares unto Baltazar Baca and his two sons, and which said tract of land, situated in said county as aforesaid, was and is described as follows, that is to say: It is bounded on the east by a tableland; thence it extends westward five thousand Castilian varas to a sharp-pointed black hill; on the north it is bounded by the Cebolleta Mountain; on the south it is bounded by some white bluffs, at whose base runs the Zuñi Road—all as the same is known and designated upon the maps, plats and surveys in file number 104 in the office of the surveyor-general of the Territory of New Mexico.

"2. That such title so remained in said grantees and their successors from thence hitherto, and up to and including the time of the cession of the land now comprised in the Territory of New Mexico to the United States, and has so continued from thence to the present time.

"3. That the said grantees and their successors have from the time of the making of said grant complied with all conditions necessary to the validity of the same.

"4. That such title in such grantees and their successors to said tract of land was and is complete, valid and perfect, and so was at the date of the cession of the land now comprised in the Territory of New Mexico to the United States by the treaty of Guadalupe Hidalgo; and the same was and is such a title as the United States is bound to recognize and confirm by virtue of said treaty and otherwise.

"5. That the claimant, Margarito Baca, is a lineal descendant of the said Baltazar Baca, one of the original grantees.

"6. But the court further finds, as a matter of fact, that the land comprised within the tract aforesaid is included within the outboundaries of the town of Cebolleta grant, reported number 46, and the Pagate purchase tract, reported number 30; the said Cebolleta grant having been confirmed to the claimants thereof by an act of Congress approved March 3, 1869, and thereupon duly patented to said claimants by the proper authorities of the United States; and the said Pagate purchase tract having been confirmed to the Indians of the pueblo of Laguna by an act of Congress approved June 21, 1860, and thereupon patented to said pueblo by the proper authorities of the United States.

"7. Wherefore it is considered and adjudged by the court that a complete, valid and perfect title in and to the tract of land above described was and is vested in the said Baltazar Baca and his two sons and their successors in interest; but that, notwithstanding such fact, this court is without jurisdiction, because of the patents for the said land so as aforesaid issued by the United States, to decree and confirm the same unto them, or to order a survey thereof for such purpose, and for such reason no other or different relief than the pronouncing upon the character of the claimant's title as aforesaid is or will be granted by this court, and it is so ordered."

The United States appealed to this court.

[February 24, 1902.]

Mr. Justice GRAY, after stating the case as above, delivered the opinion of the Court.

The duty of securing private rights in lands within the territory ceded by Mexico to the United States by the treaties of 1848 and 1853, (whether complete and absolute titles, or merely equitable interests needing some further act of the Government to perfect the legal title,) and of fulfilling the obligations imposed upon the United States by the treaties, belonged to the political department of the Government; and might either be discharged by Congress itself, or be delegated by Congress to a strictly judicial tribunal or to a board of commissioners. *Ainsa v. New Mexico & Arizona Railroad*, 175 U. S. 76, 79, and cases there cited.

The record in this case shows that the land demanded under a grant from the Spanish authorities in 1768 had been included in grants confirmed by acts of Congress in 1860 and 1869, and in patents issued accordingly by the proper authorities of the United States; and that the Court of Private Land Claims for that reason held that it was without jurisdiction to decree and confirm the land to the petitioners, or to order a survey thereof for that purpose; and yet undertook to adjudge that a complete, valid and perfect title in fee simple had vested by the Spanish grant in the grantees, and remained in them and their successors to the present time.

This action of the Court of Private Land Claims is sought to be justified by the following provisions of the act of Congress of March 3, 1891, c. 539, creating that court. 26 Stat. 854.

By section 1, "said court shall have and exercise jurisdiction in the hearing and decision of private land claims, according to the provisions of this act."

By section 6, any person or corporation claiming lands within the limits of the territory acquired by the United States from the Republic of Mexico, and since within the territories of New Mexico, Arizona or Utah, or

the States of Nevada, Colorado or Wyoming, by virtue of such a Spanish or Mexican grant as the United States are bound by the treaties of cession to recognize and confirm, "which at the date of the passage of this act have not been confirmed by act of Congress, or otherwise finally decided upon by lawful authority, and which are not already complete and perfect," to present a petition stating his case and praying that the validity of the title or claim may be inquired into and decided. "And the said court is hereby authorized and required to take and exercise jurisdiction of all cases or claims presented by petition in conformity with the provisions of this act, and to hear and determine the same, as in this act provided, on the petition and proofs in case no answer or answers be filed after due notice, or on the petition and the answer or answers of any person or persons interested in preventing any claim from being established, and the answer of the attorney for the United States where he may have filed an answer, and such testimony and proofs as may be taken;" and to "render a final decree according to the provisions of this act."

By section 7, "the said court shall have full power and authority to hear and determine all questions arising in cases before it, relative to the title to the land the subject of such case, the extent, location and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title and the boundaries of the grant or claim presented for adjudication, according to the law of nations," the stipulations of the treaties of 1848 and 1853, "and the laws and ordinances of the government from which it is alleged to have been derived, and all other questions properly arising between the claimants or other parties in the case and the United States, which decree shall in all cases refer to the treaty, law or ordinance under which such claim is confirmed or rejected."

By section 8, "any person or corporation claiming lands in any of the States or Territories mentioned in this act under a title derived from the Spanish or Mexican Government that was complete and perfect at the date when the United States acquired sovereignty therein, shall have the right (but shall not be bound) to apply to said court in the manner in this act provided for other cases for a confirmation of such title; and on such application said court shall proceed to hear, try and determine the validity of the same and the right of the claimant thereto, its extent, location and boundaries, in the same manner and with the same powers as in other cases in this act mentioned. If in any such case a title so claimed to be perfect shall be established and confirmed, such confirmation shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States, and always subject to and not to affect any conflicting private interests, rights or claims held or claimed adversely to any such

claim or title, or adversely to the holder of any such claim or title. And no confirmation of claims or titles in this section mentioned shall have any effect other or further than as a release of all claim of title by the United States; and no private right of any person as between himself and other claimants or persons, in respect of any such lands, shall be in any manner affected thereby."

But all the powers so conferred upon the Court of Private Land Claims are subject to and controlled by section 13, which enacts that "all the foregoing proceedings and rights shall be conducted and decided subject to the following provisions, as well as to the other provisions of this act, namely:" Then follow several provisions, the fourth of which is: "No claim shall be allowed for any land, the right to which has hitherto been lawfully acted upon and decided by Congress, or under its authority."

The language of this provision appears to us too clear to be misunderstood or evaded. The manifest intent of Congress appears to have been that with any land, of the right to which Congress, in the exercise of its lawful discretion, had itself assumed the decision, the Court of Private Land Claims should have nothing to do. The whole jurisdiction conferred upon that court is to confirm or reject claims presented to it, coming within the act. All the powers conferred upon it are incident to the exercise of that jurisdiction. When it has no jurisdiction to confirm or reject, it has no authority to inquire into or pass upon the case, beyond the decision of the question of jurisdiction. The peremptory declaration of Congress, that "no claim shall be allowed for any land, the right to which has hitherto been lawfully acted upon and decided by Congress," necessarily prohibits the court from passing upon the merits of any such claim.

In *United States v. Conway*, 175 U. S. 60, it was accordingly declared by this court that the Court of Private Land Claims had no authority to confirm such a claim; and it necessarily follows that it has no authority to express any opinion upon the merits of it, when the right to all the land claimed has already been decided by Congress. *Las Animas Co. v. United States*, 179 U. S. 201. Confusion, rather than certainty, would result from allowing the expression of an opinion to stand, which could not be made the basis of any effectual judgment.

The Court of Private Land Claims having discovered that by the express prohibition of Congress it was without jurisdiction to decree and confirm the land to the petitioner, the merits of the case cannot be decided, either by that court, or by this court on appeal; and the decree below, which undertook to pass upon the merits, must therefore be reversed, and the case remanded with directions to dismiss the petition for want of jurisdiction, without prejudice to the right of the petitioner to assert his title in any court of competent authority. *United States v. Roselius*, 15 How. 36, 38.

Decree reversed accordingly.